
BULLETIN

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2021-84-A

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2021-85-BZ

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2021-86-BZY

88 Walker Street, Block 00196, Lot(s) 0024, Borough of **Manhattan, Community Board: 1**. Extension of time (§ 11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district M1-5 district.

2021-87-BZ

37-16 Union Street, Block 4978, Lot(s) 0046, 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 § 61-20. C4-3 zoning district. C4-3 district.

2021-88-A

207 Central Park North, Block 1826, Lot(s) 0022, Borough of **Manhattan, Community Board: 11**. Proposed 3-story enlargement to an existing 6-story residential building. The applicant seeks a waiver of: MDL Section 211.1 (non-fireproof tenement cannot exceed five-stories). R8A zoning district. R8A district.

2021-89-A

217 Central Park North, Block 1826, Lot(s) 0018, Borough of **Manhattan, Community Board: 11**. Proposed 3-story enlargement to an existing 6-story residential building. The applicant seeks a waiver of: MDL Section 211.1 (non-fireproof tenement cannot exceed five-stories), MDL Section 212.1 (no enlargement to a tenement if not in compliance with MDL Section 26), and MDL Sections 26(5)(B) (rear yard depth), 26(7)(a) (inner court) and 26(7)(b) (outer court). R8A zoning district. R8A district.

2022-1-BZY

1227 Broadway, Block 00831, Lot(s) 0068, Borough of **Manhattan, Community Board: 5**. Extension of time (§ 11-332) to complete construction of a minor development of a transient hotel commenced under the prior zoning. M1-6 zoning district. M1-6/8D district.

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

CALENDAR

PUBLIC HEARINGS
FEBRUARY 7-8, 2022, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN public hearings, Monday, February 7, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday February 8, 2022, at 10:00 A.M. and 2:00 P.M., The hearings will be conducted either as a “hybrid” hearing (with participation in person and remotely) or as a virtual hearing (with only remote participation). Applicants and the public should check the front page of the Board of Standard and Appeals website (www.nyc.gov/bsa) the Friday before the hearing for more details :

SPECIAL ORDER CALENDAR

519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP for BP Products North America, Inc. owner.
SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board’s Rules of Practice and Procedures. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.
COMMUNITY BOARD #1SI

58-99-BZ

APPLICANT – Eric Palatnik P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.
SUBJECT – Application September 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy and Complete Construction of a previously approved variance permitting the operation an automotive service station (UG 16B) which expired on March 19, 2020. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 18-10 Utopia Parkway, Block 5743, Lot 75, Borough of Queens.
COMMUNITY BOARD #7Q

15-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Lafayette Astor Associates, LLC., owner; TSI Astor Place, LLC dba New York Sports Club, lessee.
SUBJECT – Application July 13, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (New York Sports Club) which expired July 14, 2019; Amendment to request a change in the hours of operation; Waiver of the Board’s Rules of Practice and Procedures. M1-5B zoning district.
PREMISES AFFECTED – 8-10 Astor Place, Block 545,

Lot 28, Borough of Manhattan.
COMMUNITY BOARD #2M

72-11-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.
SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.
PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.
COMMUNITY BOARD #3Q

ZONING CALENDAR

2020-36-BZ

APPLICANT – Eric Palatnik, P.C. for Bolla City Holdings, LLC., owner.
SUBJECT – Application April 27, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.
PREMISES AFFECTED – 8401 Flatlands Avenue, Block 8005, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #18BK

2021-44-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for DK Bedford Realty LLC, owner.
SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space), ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.
PREMISES AFFECTED – 3204 Bedford Avenue, Block 7606, Lot 77, Borough of Brooklyn.
COMMUNITY BOARD #14BK

2021-45-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Max Zalta, owner.
SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space and lot coverage), ZR §23-631(b) (perimeter wall height) and ZR §23-47 (rear yard). R3-2 zoning district.
PREMISES AFFECTED – 1714 East 27th Street, Block 6809, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #15BK

Margery Perlmutter, Chair/Commissioner

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PUBLIC HEARINGS
MONDAY-TUESDAY, JANUARY 10-11, 2022
10:00 A.M.

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

SPECIAL ORDER CALENDAR

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 – 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 variance, previously granted under Z.R. § 72-21 that permitted the maintenance of an accessory parking facility and expired on February 13, 2015, and an extension of time to obtain a certificate of occupancy, which expired on May 9, 2001.

A public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, with continued hearings on February 11, 2020, August 10, 2020, February 22, 2021, May 24, 2021, and October 18, 2021, and then to decision on January 11, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 11, Queens, recommends approval of this application on condition that there be no storage of vehicles, including overnight, unless related to the approved uses on the Premises; proper drainage be provided to correct water ponding; the lot be repaved and restriped; the location of the waste dumpsters not be placed in accessory parking spaces; and, access to the lot be gated and closed when retail stores are closed.

The Premises are an irregularly shaped lot located on the south side of Little Neck Parkway, between Marathon Parkway and Northern Boulevard, within an R2A zoning district, in Queens. With approximately 180 feet of frontage along Little Neck Parkway, 287 feet of depth, and 45,243

square feet of lot area, the Premises are occupied by an existing accessory parking facility with 114 parking spaces.

The Board has exercised jurisdiction over the Premises since February 13, 1980, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, in a then-R3-2 zoning district, the construction and maintenance of an accessory parking facility, for a term of ten years, to expire on February 13, 1990, on condition that parking be restricted to accessory parking by the neighborhood commercial establishments; adequate drainage facilities be provided; gates to the parking facility be locked after normal business hours; lighting be provided and directed away from adjoining plots; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed in accordance with Z.R. § 72-23.

On April 18, 1990, under the subject calendar number, the Board amended the variance to extend the term for ten years, to expire on February 13, 2000, on further condition that the landscaping be maintained and replaced when necessary; the fencing and gates be maintained, repaired, or replaced when required; the parking lot be maintained clean at all times; the parking spaces be restriped and the parking lot conform with the revised drawings of proposed conditions submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 18, 1991.

On September 22, 1992, under the subject calendar number, the Board waived its Rules of Procedure and further amended the variance to extend the time to obtain a certificate of occupancy for two years, by April 18, 1993.

On May 9, 2000, under the subject calendar number, the Board further amended the variance to extend the term for 15 years, to expire on February 13, 2015, on further condition that the Premises be kept clean of debris and graffiti; all lighting be pointed away from residential dwellings; there be no parking on the sidewalks; all signs be maintained in accordance with BSA-approved plans; the conditions be listed on the certificate of occupancy; the Premises be maintained in substantial compliance with plans filed with the application; other than amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by May 9, 2001.

The term of the variance, and time to have obtained a certificate of occupancy, having expired, the applicant now seeks an extension. Because this application was filed more than two years since the expiration of term and more than 30 days since the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (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.

The applicant seeks no changes to the Premises and represents that the Premises continue to maintain 114 accessory parking spaces. Over the course of hearings and in response to Board and community concerns, the applicant modified the plans to provide for a drywell installation and improvements including fence repair, light pole

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installations, repaving and surfacing of the lot, and curb and curb cut repair. The applicant revised the parking to provide for required ADA spaces and provide proper maneuverability, reducing the total accessory parking spaces to 113. Further, the applicant submitted lighting test measurements of the newly installed light poles to ensure the lighting at the Premises does not adversely impact nearby residential uses.

The applicant also submits that the Premises (“Parcel C”) owner maintains an easement agreement, with block 8129, tax lot 64 (“Grantor A” and “Parcel A”) and tax lot 65 (“Grantor B” and “Parcel B”), recorded on December 15, 2021, under CRFN # 2021000504930, providing a driveway easement (the “Easement Area”) benefitting only the Premises, Parcel A, and Parcel B, and commits to the following:

The Easement Area shall be used to permit and enable present and future owners of said parcels, their heirs, assigns, tenants, patrons and invitees to pass over the lands of Parcel A and Parcel B for the purpose of ingress and egress to and from Little Neck Parkway and Parcel C for pedestrian and motor vehicle use.

The Easement Area shall at all times be maintained and kept clear and unobstructed. Grantor A shall be responsible for the portion of the Easement Area within the metes and bounds of Parcel A, and Grantor B shall be responsible for the portion of the Easement Area within the metes and bounds of Parcel B, with no contribution from any other party.

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.

This easement agreement may not be modified, amended, or terminated during the term of variance granted under Cal. No. 332-79-BZ without the prior written consent of the BSA.

Failure to comply with the terms of this easement agreement may result in the revocation of the variance granted under Cal. No. 332-79-BZ.

This easement agreement shall be recorded at the city register’s office and the cross-reference number and title of the easement agreement shall be cited on each temporary and permanent certificate of occupancy hereafter issued to Parcels A, B, and/or C.

This agreement shall only become effective upon a current approval by the BSA of the Application. In the event the Application is denied, or the approval thereunder is terminated, surrendered, or otherwise no longer in effect, this agreement shall automatically be null and void and of no further legal effect.

Based upon its review of the record, the Board has determined that the requested extension of term and extension of time to obtain a certificate of occupancy are

appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated February 13, 1980, as amended through May 9, 2000, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of term, to January 11, 2032, and one-year extension of time to obtain a certificate of occupancy; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “December 20, 2021”—One (1) sheet; and *on further condition*:

THAT the term of the variance shall expire on January 11, 2032;

THAT lumen spread shall be kept at 0.0 along the residential property lines and be tested in the field with lights on and lights off to ensure this, with shielding installed where indicated;

THAT all landscaping, fencing, paving, and trash enclosures shall be maintained in first-class condition and shall be repaired and replaced when necessary;

THAT the Premises shall be kept clean of debris and graffiti;

THAT all lighting shall be pointed away from residential dwellings;

THAT there shall be no parking on the sidewalks;

THAT all signs shall be maintained in accordance with BSA-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 332-79-BZ”), shall be obtained within one year, by January 11, 2023;

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

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

THAT the Department of Buildings must 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 11, 2022.

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99-14-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for Arisa Realty Co X LLC., owner.

SUBJECT – Application August 11, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to facilitate the construction of a new 21-story which expired on October 29, 2021. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 432-434 West 31st Street, Block 728, Lot 55, 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 Scibetta5
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 construction of a 25-story hotel building that does not comply with Z.R. §§ 93-42(a), (b), and (c), and expired on July 12, 2020.

A public hearing was held on this application on November 30, 2021, after due notice by publication in *The City Record*, and then to decision on January 10, 2022.

The Premises are located on the south side of West 31st Street, between Dyer Avenue and 9th Avenue, in a C6-4 zoning district and in the Special Hudson Yards District, in Manhattan. With approximately 42 feet of frontage along West 31st Street, 92 feet of frontage along Dyer Avenue, including its adjacent sidewalks, approximately 41 feet of frontage along the portion of Dyer Avenue where it begins to widen along a curve, and 21 feet of frontage along a roadway leading to the Lincoln Tunnel (the “Roadway”), and 5,049 square feet of lot area, the Premises are occupied by a vacant four-story mixed use commercial and residential building that will be demolished for the construction of the project hotel building.

The Board has exercised jurisdiction over the Premises since July 12, 2016, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the construction of a 25-story hotel building that does not comply with Z.R. §§ 93-42(a), (b), and (c), on condition that all work substantially conform to drawings filed with the application; the following be the bulk parameters of the building: lot coverage of 94.2 percent above the height of 150' and no setbacks, as indicated on the BSA-approved plans; an E designation (E-390) be placed on the site to ensure proper hazardous materials remediation; the conditions be listed on the certificate of occupancy; prior to DOB's issuance of any building permit, OER shall issue a Notice to Proceed or a Notice of No Objection pursuant to the site's E designation (E-390); prior to DOB's issuance of a certificate of occupancy, OER issue a Notice of No Objection or a Notice of Satisfaction; substantial construction be completed pursuant to 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); 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 for substantial construction to have been completed having expired, the applicant seeks the subject relief. The applicant represents that, since the Board's 2016 variance approval, a permit for demolition of the existing building was obtained in 2018 and interior demolition work has proceeded as well. The applicant obtained a Notice to Proceed, dated September 5, 2019. However, the applicant represents that demolition of the existing building must be completed to obtain a New Building permit for the proposed hotel building and has been further delayed by ongoing construction license agreement negotiations between the Premises and two adjacent properties. The applicant anticipates another 12 months before construction financing and license agreements will be finalized and then estimates requiring approximately 27-28 months of construction work. Accordingly, the applicant seeks a four-year extension of time to complete construction.

In response to Board direction, the applicant submits proof of payment and resolution of outstanding Department of Buildings Environmental Control Board summonses.

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 July 12, 2016, so that as amended this portion of the resolution shall read: “to grant a four-year extension of time to complete construction, to January 10, 2026; *on condition*:

THAT substantial construction shall be completed by January 10, 2026;

THAT the following shall be the bulk parameters of the building: lot coverage of 94.2 percent above the height of 150' and no setbacks, as indicated on the BSA-approved plans;

THAT an E designation (E-390) is placed on the site to ensure proper hazardous materials remediation;

THAT prior to DOB's issuance of any building permit, OER shall issue a Notice to Proceed or a Notice of No Objection pursuant to the site's E designation (E-390);

THAT prior to DOB's issuance of a Certificate of Occupancy, OER must issue a Notice of No Objection or a Notice of Satisfaction;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 99-14-BZ”),

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shall be obtained within four years, by January 10, 2026;

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 10, 2022.

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 March 14, 2022, at 10 A.M., for continued hearing.

1254-80-BZ

APPLICANT – Jay Goldstein, Esq., for Sephardic Institute for Advanced Learning, owner.

SUBJECT – Application May 26, 2020 – Amendment of a previously approved Variance (§72-21) to permit the enlargement of a previously approved house of worship contrary to underlying bulk requirements. R6A, Special Ocean Parkway District.

PREMISES AFFECTED – 511 Avenue R, Block 394, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

364-82-BZ

APPLICANT – Qian Su, for Little Neck Commons LLC, owner; SAF-T-SWIM, LLC, lessee.

SUBJECT – Application June 17, 2021 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Special Permit which permitted the operation of a Physical Cultural establishment which expired on May 17, 2017; Amendment to reflect a change in owner/operator, signage and hours of operation; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 245-24 Horace Harding Expressway, Block 8276, Lot 100, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Continued hearing
PCE.

837-85-AIII

APPLICANT – William Gati, for Cesar A Linares, owner.
SUBJECT – Application December 14, 2020 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure contrary to Section C26-254.0 of the 1938 Building Code which expired on December 17, 2020. R2 Zoning District.

PREMISES AFFECTED – 166-78 73rd Avenue, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for decision, hearing closed.

221-88-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Long Island Jewish Medical Center, owner.

SUBJECT – Application February 25, 2021 – Amendment to the Board’s condition of term of a previously approved Special Permit (73-49) which permitted open parking on the roof of an accessory parking garage which expired on December 6, 2013. R7-1 zoning district.

PREMISES AFFECTED – 102-01 60th Road, Block 2131, Lot 16, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for decision, hearing closed.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for continued hearing.

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110-99-BZ

APPLICANT – Law Office of Jay Goldstein, for Dkiuc & Company, LLC, owner.

SUBJECT – Application May 6, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive repair shop (Use Group 16B) which expired on June 27, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on September 18, 2016; Waiver of the Board’s Rules of Practice and Procedures. R6B zoning district.

PREMISES AFFECTED – 56-58 Kosciuszko Street, Block 1783, Lot 34, Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for Grigoriy Katsura, owner.

SUBJECT – Application September 11, 2020 – Amendment of a previously approved Special Permit (§73-622) which permitted the enlargement of an existing home; Extension of Time to Complete Construction which expired on September 18, 2019; Waiver of the Board’s Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, Block 8749, Lot 0275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for decision, hearing closed.

49-11-BZ

APPLICANT – Akerman LLP, for A&G Real Estate, LLC, owner Barry’s Bootcamp NYC, LLC, lessee.

SUBJECT – Application October 26, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Barry’s Bootcamp Fitness Center) located on the cellar and first floor of an existing building which is set to expire on July 12, 2021. C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Adjourned PCE.

224-14-BZ & 225-14-A

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard, owner.

SUBJECT – Application August 31, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy, which will expire on January 30, 2022, for a previously approved Variance (72-21) to permit the addition of five (5) accessory off-street parking spaces to an ambulatory diagnostic or treatment health care facility, and an appeal pursuant to General City Law 35. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for decision, hearing closed.

258-15-BZ

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application July 21, 2021 – Extension of Time of a previously approved Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building which expired on July 25, 2021. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16th Street, Block 7460, Lot 0096, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for decision, hearing closed.

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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 – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

I.

The decisions of the Department of Buildings, dated September 14, 2021, acting on Alteration Type New Building Application Nos. Q00581732, Q000581663, Q00581348, and Q00581191 read in pertinent part:

1. Proposed two family dwelling is in bed of a mapped street. Comply with section 35 of the General City Law, refer to the Board of Standards and Appeals for an Administrative Appeal.
2. Show compliance with section 36 of the General City Law for proposed development.

This is an application under General City Law (“GCL”) § 35 to permit, in an R3-1 zoning district, the construction of four two-story, two-family residences located within the bed of a mapped street.

A public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with continued hearings on February 26, 2019, July 16, 2019, February 25, 2020, September 14, 2020, and December 14, 2020 and then to decision on January 10, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood.

The Premises are located on the west side of Clintonville Street between the Cross Island Expressway and 17th Avenue, within an R3-1 zoning district, in Queens. Lot 19 has approximately 60 feet of frontage along Clintonville Street, 192 feet of depth, and 11,520 square feet of lot area; Lot 20 has approximately 65 feet of frontage along 16th Road, 43 feet of depth, and 2,655 feet of lot area; Lot 21 has approximately 50 feet of frontage along Clintonville Street, 250 feet of depth, and 12,500 square feet of lot area; and Lot 28 has approximately 48 feet of frontage along Clintonville Street, 186 feet of depth, 8,972 feet of lot area. The Premises are currently vacant.

II.

GCL § 36 (2) states, in part:

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.

III.

The applicant proposes to create six new tax lots from a merger and reapportionment of the existing four tax lots. Four of the new tax lots, tentative Block 4699, Lots 20, 21, and 23 and Block 4701, Lot 24, are the subject to this application. The applicant submitted two options for development at the subject Premises. Originally, under what the applicant refers to as “Option II”, the applicant proposed to construct five two-family, two-story residences and requested four waivers of GCL § 35 for residences be constructed on lots 20, 21, 23, and 24 and three waivers of GCL § 36 for residences to be constructed on lots 22, 23, and 24. The applicant stated that a private road to be called Clintonville Court would act as a fire apparatus access road extending perpendicular from mapped Clintonville Street to provide access to the proposed residences on lots 22 to 24. The applicant further noted that Clintonville Court would be a small private road extending only 128'-9" into Lot 22 at a planned width of 34'-0", providing access to planned accessory parking spaces for the proposed residences.

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Later, the applicant amended the application under Option II to seek three waivers of GCL § 35 and one waiver of GCL § 36 under BSA Cal. No. 2018-105-A. The applicant proposed to apportion the site into tax lots with flag lots, which would allow for construction at the rear of the site with frontage required by GCL § 36 provided through the rearranged lots. The applicant represents that this development would consist of seven two-story, two-family residences, four semi-attached and three detached, with the subject of the waivers as: one two-story, two-family, detached residence with a floor area of approximately 1,388 square feet on lot 20; one two-story, two-family, detached residence with a floor area of 1,388 square feet on lot 21; one two-story, two-family, detached residence with a floor area of approximately 1,344 square feet on lot 23; and one two-story, two-family semi-attached residence with a floor area of approximately 1,375 square feet on lot 24. Furthermore, the applicant states that the four proposed residences fronting on Clintonville Street would have frontage, while the three residences at the rear of the site would qualify for frontage through the narrow flagpoles to Clintonville Street.

As per the hardship requirement under GCL § 36, the applicant states that the existing tax lots that comprise the development site are burdened unlike comparable lots in the subject block, as the existing lots at the Premises include a landlocked interior lot (Block 4701, Lot 20), a lot fully within the bed of mapped 16th Road (Block 4699, Lot 21), and two lots partially within mapped 16th Road (Block 4699, Lot 19, Block 4701, Lot 28). Furthermore, the applicant notes the southern portion of the subject site extends to a greater depth than comparable residentially developed lots to the north as both Lot 20 of Block 4701 and Lot 21 of Block 4699 extend past the midblock line and that the depth of these lots results in a significant portion of the subject site that would not be possible without the requested GCL §§ 35 and 36 waivers.

Over the course of hearings, the Board raised questions about the strength of the applicant's hardship argument as per GCL § 36 and how the Board did not believe the residences on the proposed site plan could feasibly be built or be desirable to potential tenants. The Board encouraged the applicant to discuss with the NYC Department of Transportation ("DOT") how its site plan could take advantage of the existing mapped street 16th Road, which connects directly to 150th Place.

In response to the Board's comments at hearings, the applicant submitted a new site plan which it refers to as "Option I". Under Option I, the applicant requests four approvals pursuant to GCL § 35 to permit construction in the bed of mapped 16th Road and to withdraw its application for a GCL § 36 waiver. In total, the applicant seeks to construct six two-story, two-family residences, four of which are detached and two semi-detached on zoning lots with six tax lots. In addition to the residences, the applicant seeks to construct four accessory one-car garages and four open parking spaces. The applicant states that four residences would have access from Clintonville Street (of

which the residences located on lots 20 and 21 are at issue in this application), and two residences, located on lots 23 and 24, would have access from 150th Place through the city-owned Lot 32 which is located on 16th Road creating a turnaround that the applicant states would be construct and paved to NYC DOT standards. The applicant argues that the proposed development consists of residences that meet all bulk requirements for the underlying zoning district, including: one two-story, two-family, semi-attached residence with a floor area of approximately 1,388 square feet and a one-car garage with a floor area of 440 square feet on lot 20, also known as 15-58 Clintonville Street; one two-story, two-family, detached residence with a floor area of approximately 1,388 square feet and a one-car garage with a floor area of 240 square feet on lot 21, also known as 15-62 Clintonville Street; one two-story, two-family, detached residence with a floor area of 1,463 square feet on lot 23, also known as 150-89 Clintonville Court; and one two-family, two-story detached residence with a floor area of 1,463 square feet on lot 24, also known as 150-90 Clintonville Court.

IV.

By letter dated February 9, 2017, the NYC DOT states that in reply to the application and revised documents submitted to the BSA on January 18, 2017 and provided to DOT regarding the proposal for construction in the bed of mapped street, 16th Road, contrary to GCL § 35, which prohibits building in the bed of a mapped street. According to Queens Borough President's Topographical Bureau, 16th Road at this location is mapped at 50 feet, and the City does not have title. The improvement of 16th Road at this location, which would include a taking of Block 4699, lots 4701, Lot 28, is not presently included in DOT's Capital Improvement Program, but this does not preclude a change in the program in the future.

By letter dated July 16, 2018, the Department of Environmental Protection ("DEP") states that it has reviewed the applicant's submission of a proposed amended drainage plan dated February 13, 2018 and notes that the information submitted was sufficient to determine that the drainage plan can be amended. Therefore, the application will be considered completed and closed.

By letter dated January 10, 2022, the Fire Department states that the Fire Department, Bureau of Operations has reviewed the site plan for the application and offers no objections. The review has determined that Proposed Site Plan: Option 1, dated November 16, 2021, is an acceptable plan for fire apparatus access. A condition shall be noted in the resolution that "No Parking" signs be installed directly in front of the two residences on lots 23 and 24. The Bureau of Fire Prevention will inspect these Premises and enforce all applicable rules and regulations, in addition to the Board of Standards and Appeals resolution.

Accordingly, 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

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and Appeals does hereby *modify* the decision of the Department of Buildings dated September 14, 2021, acting on Alteration Type New Building Application Nos. Q00581732, Q000581663, Q00581348, and Q00581191, under the powers vested in the Board by Section 35 of the General City Law, to *permit* the construction of a building located within the bed of a mapped street *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received November 18, 2021”- One (1) sheet; and *on further condition*:

THAT “No Parking” signs be installed directly in front of the two residences on lots 23 and 24;

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. Nos. 2017-16-A thru 2017-19-A”), shall be obtained within four years, by January 10, 2026;

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, January 10, 2022.

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 – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated April 17, 2017, acting on Application Type Alteration

2 No. 420556062, reads in pertinent part:

1. Proposed two family dwelling is in bed of a mapped street. Comply with section 35 of the General City Law, refer to the Board of Standards and Appeal for Administrative Appeal.

2. Show compliance with section 36 of the General City Law for proposed development.

This is an application under General City Law (“GCL”) § 36 to permit, within an R3-1 zoning district, the construction of a two-story two-family, detached residence that does not front on a mapped street.

A public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with continued hearings on February 26, 2019, July 16, 2019, February 25, 2020, April 20, 2020, June 29, 2020, September 14, 2020, and December 14, 2020, and then to decision on January 10, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and the surrounding neighborhood.

The Premises are located at the west side of Clintonville Street, between the Cross Island Expressway and 17th Avenue, within an R3-1 zoning district, in Queens. With approximately 48 feet of frontage along Clintonville Street, 186 feet of depth, and 8,972 square feet of lot area, the Premises are occupied currently vacant.

II.

General City Law Section 36(2) reads in pertinent part:

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

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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.

III.

The applicant proposes to create six new tax lots from a merger and reapportionment of four existing tax lots. The applicant submitted two options for development at the subject Premises. Originally, under what the applicant refers to as "Option II", the applicant proposed to construct five two-family, two-story residences and requested four waivers of GCL § 35 for residences be constructed on lots 20, 21, 23, and 24 and three waivers of GCL § 36 for residences to be constructed on lots 22, 23, and 24. Additionally, the applicant stated that a private road to be called Clintonville Court would act as a fire apparatus access road extending perpendicular from mapped Clintonville Street to provide access to the proposed residences on lots 22 to 24. The applicant further noted that Clintonville Court would be a small private road extending only 128'-9" into Lot 22 at a planned width of 34'-0", providing access to planned accessory parking spaces for the proposed residences.

Later, the applicant amended the application under Option II to seek three waivers of GCL § 35 and one waiver of GCL § 36. The applicant proposed to apportion the site into tax lots with flag lots, which would allow for construction at the rear of the site with frontage required by GCL § 36 provided through the rearranged lots. The applicant represents that this development would consist of seven two-story, two-family residences, four semi-attached and three detached, with the subject of the waivers as: one two-story, two-family, detached residence with a floor area of approximately 1,388 square feet on lot 20; one two-story, two-family, detached residence with a floor area of 1,388 square feet on lot 21; one two-story, two-family, detached residence with a floor area of approximately 1,344 square feet on lot 23; and one two-story, two-family semi-attached residence with a floor area of approximately 1,375 square feet on lot 24. Furthermore, the applicant states that the four proposed residences fronting on Clintonville Street would have frontage, while the three residences at the rear of the site would qualify for frontage through the narrow flagpoles to Clintonville Street.

As per the hardship requirement under GCL § 36, the applicant states that the existing tax lots that comprise the development site are burdened unlike comparable lots in the subject block, as the existing lots at the Premises include a landlocked interior lot (Block 4701, Lot 20), a lot fully within the bed of mapped 16th Road (Block 4699, Lot 21), and two lots partially within mapped 16th Road (Block 4699, Lot 19, Block 4701, Lot 28). Furthermore, the applicant notes the southern portion of the subject site extends to a greater depth than comparable residentially developed lots to the north as both Lot 20 of Block 4701

and Lot 21 of Block 4699 extend past the midblock line and that the depth of these lots results in a significant portion of the subject site that would not be possible without the requested GCL §§ 35 and 36 waivers.

Over the course of hearings, the Board raised questions about the strength of the applicant's hardship argument as per GCL § 36 and how the Board did not believe the residences on the proposed site plan could feasibly be built or be desirable to potential tenants. The Board encouraged the applicant to discuss with the NYC Department of Transportation ("DOT") how its site plan could take advantage of the existing mapped street 16th Road, which connects directly to 150th Place.

In response to the Board's comments at hearings, the applicant submitted a new site plan which it refers to as "Option I". Under Option I, the applicant requests four approvals pursuant to GCL § 35 to permit construction in the bed of mapped 16th Road and to withdraw its application for a GCL § 36 waiver. In total, the applicant seeks to construct six two-story, two-family residences, four of which are detached and two semi-detached on zoning lots with six tax lots. In addition to the residences, the applicant seeks to construct four accessory one-car garages and four open parking spaces. The applicant states that four residences would have access from Clintonville Street, and two residences, located on lots 23 and 24, would have access from 150th Place through the city-owned Lot 32 which is located on 16th Road creating a turnaround that the applicant states would be constructed and paved to NYC DOT standards. The applicant argues that the proposed development consists of residences that meet all bulk requirements for the underlying zoning district, including: one two-story, two-family, semi-attached residence with a floor area of approximately 1,388 square feet and a one-car garage with a floor area of 440 square feet on lot 20, also known as 15-58 Clintonville Street; one two-story, two-family, detached residence with a floor area of approximately 1,388 square feet and a one-car garage with a floor area of 240 square feet on lot 21, also known as 15-62 Clintonville Street; one two-story, two-family, detached residence with a floor area of 1,463 square feet on lot 23, also known as 150-89 Clintonville Court; and one two-family, two-story detached residence with a floor area of 1,463 square feet on lot 24, also known as 150-90 Clintonville Court.

As the applicant contends that the proposed construction at the subject Premises as per the original proposed conditions plan (Option II) have been superseded by the currently proposed plans (Option I), by correspondence, dated September 15, 2021, 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, January 10, 2022.

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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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for decision, hearing closed.

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.

SUBJECT – Application September 4, 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). R3X Special Richmond District.

PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 4-5, 2022, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

2018-13-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Mamrout, owner.

SUBJECT – Application January 30, 2018 – Special Permit (§73-19) to permit a school (UG 3) (*Yeshivat Lev Torah*) contrary to ZR §42-00. Variance (§72-21) to permit the construction of a new building for the proposed school contrary to ZR §43-122 (floor area); ZR §43-43 (wall height greater than the maximum permitted); ZR §43-304 (front yard); ZR §43-25 (side yards) and the proposal does not provide the required parking and loading zone. M1-1 zoning district.

PREMISES AFFECTED – 30-32 Village Road North, Block 7123, Lot(s) 29 and 30, 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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 31, 2017, acting on Application Type Alteration 1 No. 321433463, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 42-00 in that a school is not a permitted use in an M1-1 zoning district.
2. Proposed plans are contrary to Zoning Resolution Section 43-122 in that the proposed floor area ratio exceeds the maximum permitted.
3. Proposed plans are contrary to Zoning Resolution Section 43-43 in that the proposed wall height is greater than the maximum permitted.
4. Proposed plans are contrary to Zoning Resolution Section 43-304 in that the proposed front yard is less than the minimum required.
5. Proposed plans are contrary to the Zoning Resolution Section 43-24 in that the proposed side yards do not comply with the zoning requirements.
6. Proposed plans are contrary to the Zoning Resolution in that they do not provide parking.
7. Proposed plans are contrary to the Zoning Resolution in that they do not provide a loading zone.

This is an application under Z.R. § 73-19 for a special permit to allow, in an M1-1 zoning district, a Use Group (“UG”) 3 school, contrary to Z.R. § 42-00 and a variance under Z.R. § 72-21 to permit the construction of a new building for the proposed school that does not comply with zoning requirements for floor area (Z.R. § 43-122), wall height (Z.R. § 43-43), side yards (Z.R. § 43-45), parking (Z.R. § 44-20), and loading zone (Z.R. § 44-52).

A public hearing was held on this application on March 23, 2021, after due notice by publication in *The City Record*, and then to decision on January 10, 2022. 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 received two form letters of support and one letter of objection citing concerns that the proposed construction would affect access to existing parking.

The Premises are located on the south side of Village Road North, between Van Sicklen Street and McDonald Avenue, within an M1-1 zoning district, in Brooklyn. With approximately 75 feet of frontage along Village Road North, 147 feet of depth, and 11,073 square feet of lot area, the Premises are occupied by two existing two-story residences.

The applicant seeks to demolish the existing residences and construct a six-story plus cellar building with a four-story portion in the front that sets back to a fifth story

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then sets back further for the sixth story. The applicant states that the proposed building would contain a cellar comprised of a multi-purpose room, kitchen, trash rooms, mechanical rooms, and storage; a first floor would comprise of four pre-school classrooms, the pre-school director's office, reception, a nurse's office, lobby, and security; the second floor would comprise of three pre-school classrooms, four elementary classrooms, and elementary school offices; the third floor would comprise of two elementary classrooms, two middle school classrooms, a science lab, a computer room, three resource rooms, and offices; the fourth floor would comprise of the high school classrooms, three resource rooms, a Midrash/synagogue, and offices; the fifth floor would comprise of a gymnasium, a STEM lab, and a teacher's lounge; and the sixth floor would comprise of the double height space from the gymnasium and a library/media center. The applicant further represents other accessory uses, such as bathrooms and janitor's closets, would occupy the remainder of the floors.

At hearing, the Board expressed concerns regarding the incompleteness of the applicant's materials while reflecting that the application was not ready to be heard by the Board. Initially, at the request of the applicant, the application had been off-calendared after submission, but the Board noted that it no longer engages in that practice, preferring, instead, that an application be withdrawn and resubmitted when ready for review. As such, the Board stated that the application did not include several required portions necessary for a complete review, including a site plan, a building height study, a contract with a private busing company intended to transport students, and a restrictive declaration preventing the buses from parking in front of the Premises. Furthermore, the Board stated that the application did not include any information on the height of the proposed building, the bulkhead height to top of the elevator, a discussion on the arrival and departure of the high school students, or proposed plans that clearly showed property lines and site dimensions; indicated the finish material on elevations; coordinated the elevation throughout all the documents; demonstrated a fence on the roof area, elevations, and sections; and provided for FDNY access.

Additionally, the Board declared that the much of the application materials that it reviewed were defective including the DOB objection, which did not state all of the sections of the Zoning Resolution the application sought to waive and the Statement of Facts, which did not contain a discussion of the required findings under Z.R. §§ 73-19 and 72-21. Regarding the applicant's Statement of Facts, the Board noted that it lacked any information relating to comparisons of the proposed school to similarly situated schools in the area, the number of school-age children in the area, the correct New York State ("NYS") occupancy requirements for pre-school students, and the proposed space per student. Moreover, the Board noted that the front lot line of the subject Premises is across from a C1-3 (R5) zoning district and may be regulated pursuant to Z.R. § 43-304, which discusses front yards along district boundary

lines that are opposite residence districts. Since the zoning district across from the subject Premises has a commercial overlay, the Board requested that the applicant obtain a ZRD-1 to clarify which district is controlling for this kind of protective regulation.

With regard to the Z.R. § 73-19 findings, the Board stated that there are certain questions which needed to be addressed in the Statement of Facts and supported with evidence in the application material for the Board to be able to consider the special permit. The Board states that as a threshold matter, only applicants who meet the Z.R. § 12-10 definition of a "school" and can provide the requisite proof that it meets the requirements under NYS Education Requirements §§ 32-04, 32-05, and 32-10 are able to apply for the special permit. Furthermore, the Board stated that the 2018 amendment of the NYS Education Law § 32-04 requires the Commissioner of the Department of Education to decide whether the required educational equivalency had been met, and the 2019 legislation explains the minimum standards for educational equivalency. Here, the applicant provided its Basic Education Data System ("BEDS") code as proof of its eligibility instead of the typically acceptable means of evidence such as a school charter, brochure, curriculum, and class schedules. Additionally, the Board noted the supporting documentation that the applicant did provide, such as the room utilization diagram, demonstrated that the Premises would not be used in accordance with the complying and acceptable standards. Therefore, the Board concluded the applicant had not demonstrated that it met the Z.R. § 12-10 definition of a school.

As per Z.R. § 73-19 (a), the Board recognized that the applicant's represented catchment area, which included the Gravesend, Marine Park, Madison, Flatbush, and Midwood neighborhoods in Brooklyn, is a very large area. Under this finding, the Board requires the applicant demonstrate that it searched within its catchment area to find a site of suitable proportions. The Board stated that applicants must provide a letter from the real estate broker who conducted the search and include the search criteria, available sites actually considered during the search, and why they were rejected, which the applicant did not provide. As per Z.R. § 73-19 (c), the applicant claimed that the site had a adequate separation from the adverse effects of non-residential uses, but the Board noted that noise, air quality, and hazmat review of the site was still pending. Additionally, the Board discussed how the applicant did not propose any sound attenuation measures to protect the Premises from the noise in the surrounding areas, an assessment of the school's outdoor recreational use, or how it sought to protect its neighbors from the impact of this use.

As per Z.R. § 73-19 (d), the applicant described the Premises as located on a "very quiet block", but the Board rebutted that the Premises are around the corner from McDonald Avenue and near Avenue U and Van Sicklen Street, which are highly trafficked areas. The Board also described the location as downwind of Avenue M and across from an E-designation site. Furthermore, the applicant proposed to have the student arrival and departure

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located at the back staircase of the building which would require access to the five-foot side yard to the street. The Board noted that one side yard is adjacent to a private residence, and, the noise and disruption from the student movement did not demonstrate a respect to that adjacent use. The Board also noted the lack of information on the direction of student movement and an operational plan for student safety.

In regard to the Z.R. § 72-21 findings, first, the Board wondered if the applicant could construct a fully built as-of-right community facility, as the applicable zoning regulations would permit a building with 2.40 FAR (see Z.R. § 43-122), no side yard requirements (see Z.R. § 43-25), a rear yard requirement of 20 feet (see Z.R. § 43-26), and therefore, the applicant may only need to seek a Z.R. § 73-19 waiver from the Board. Additionally, as the subject lot is 100 feet deep and the rear yard requirement at the first floor and above in an M1-1 zoning district is 20 feet, the Board questioned the applicant's requested front yard waiver, especially since the adjacent properties have a 14 and 16 feet front yard, as per the front yard study. The Board further noted that the applicant's as-of-right plans are incorrect in that it demonstrates a two-story plus cellar school which is not a permitted use in an M1-1 zoning district. Additionally, the Board noted that the application was most deficient under Z.R. § 72-21(c), as the neighborhood character discussion in its Statement of Findings is sparse, and the applicant did not provide renderings that showed the proposed building in context with the adjacent structures. The Board directed that the applicant demonstrate, via a shadow study, that the building height and absence of yards would not negatively impact its neighbors as the proposed structure was very tall for the area and opposite a two-story row house and a single-family residence over which it would tower. The Board directed that proposed architecture be more respectful to the neighbors.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated December 22, 2021, 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, January 10, 2022.

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 – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 22, 2021, acting on Alteration Type 1 Application No. 321802288, reads in pertinent part:

ZR 23-45 - Proposed building does not comply with minimum required front yard.

ZR 23-631 - Proposed building does not comply with maximum permitted wall height and total height or required setback.

ZR 23-143 - Proposed building does not comply with maximum permitted FAR.

ZR 22-00 - Zero lot line building is not permitted in R5 zone.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R5 zoning district, the construction of a detached, four-story, two-family residence that does not comply with the zoning requirements for zero lot line buildings (Z.R. § 22-00), floor area/FAR (Z.R. § 23-143), front yard (Z.R. § 23-45), street wall, setback, and total height (Z.R. § 23-631).

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 September 23, 2021 and December 14, 2021 and then to decision on January 10, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and the surrounding neighborhood. Community Board 15, Brooklyn, recommends denial of this application, stating that the Premises are a small triangular, swath of land that abuts into the adjacent building's parking lot and the proposed construction is reminiscent of a four-story walk up which is believed to have lessened the value of the property in the area. The Board received one form letter of support and two letters of objection to this application, citing concerns about density, lack of parking, and decreased property value.

I.

The Premises are located at the intersection of Coyle Street and Shore Parkway on the northeast corner, within an R5 zoning district, in Brooklyn. With approximately 30 feet of frontage along Coyle Street, 104 feet of frontage along Shore Parkway, and 1,512 square feet of lot area, the Premises are currently vacant.

II.

The applicant originally proposed to construct a new detached, six-story, three-family residence with approximately 2,459 square feet (1.36 FAR), with three parking spaces and a foyer area at the ground floor, three one-bedroom, one-bathroom duplex dwelling units each approximately with 577 square feet of living space on the first through sixth floors, and a roof with an open roof

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terrace. The applicant represents that this residence would have a lot area of 1,512 square feet, two front yards with a depth of 10'-0" each, and a total height of 59'-3". In response to questions from the Board at hearing, the applicant revised the design to decrease the number of dwelling units and the total height of the building as to be more desirable to potential residents.

Now, the applicant proposes to construct a detached, four-story, two-family residence with a total floor area of approximately 2,828 square feet (1.88 FAR), two parking spaces and a foyer at the ground level, two two-bedroom, two-bathroom duplex dwelling units, each with approximately 1,252 square feet of living space on the first through fourth floors, and a roof with an open roof terrace. This proposed residence would be a zero lot line building and have two front yards with a depth of 5'-0" each and a total height of 41'-3". In the subject R5 zoning district, the Zoning Resolution permits a maximum floor area of 2,495 square feet (1.65 FAR) and a total height of 33'-0"; requires two front yards measuring a minimum of 18'-0" and 10'-0"; and does not permit zero lot line buildings, *see* Z.R. §§ 22-00, 23-143, 23-45, and 23-631.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its irregular, triangular shape and location as a vacant, corner lot—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 lots within 600 feet of the Premises (the "Study Area") finding seven corner lots, of which one is a vacant lot with a triangular shape. The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. § 23-45 (front yard requirements) would create a 350 square foot floorplate, which the applicant contends is not a viable floorplate. The applicant further states that a waiver of Z.R. § 23-145 (floor area/FAR requirements) is necessary to permit a 333 square foot/0.23 FAR increase and produce a more viable floorplate and building. The applicant notes that that a waiver of Z.R. § 22-00 (disallowing zero lot line buildings in R5 zoning districts) is necessary as any setback from the southerly lot line would constrain the available floorplate even further. The applicant represents that compliance with underlying zoning regulations would not permit the usable development of the Premises unless a variance were 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.

B.

Next, the applicant submits, and the Board concurs that, because the application proposes a two-family residence, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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 the surrounding area is primarily characterized by one-, two-, and multi-family residential buildings. Moreover, the applicant argues that the proposed two 5'-0" front yards would not impact the character of the neighborhood or adversely affect adjacent properties as the Premises area bordered by Shore Parkway to the north, the Belt Parkway further to the north, and a parking lot to the south.

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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, such as its irregular shape and its location as a corner lot. In support of this contention, the applicant submitted a single and separate deed search on the property which shows that the Premises were owned separately and individually from all other adjoining tracts of land since December 15, 1961.

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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that the requested waivers are no greater than necessary to provide reasonable relief and permit the development of the site in keeping with the character of the area.

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.

By letter dated January 4, 2020, the Fire Department, Bureau of Fire Prevention states that it has reviewed the application and objects to the application in that the rooftop access has not been provided and no fire protection system is proposed for the parking area. As per Section 504.4.1 of the 2014 Fire Code, "Access to building rooftops shall be provided for fire operations by provided unobstructed access to the rooftop, including unobstructed passage across the building parapet, perimeter fence or other obstructions, and

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a safe landing...” In addition, parking is being provided at the first floor under the second floor. What fire protection systems will be provided to protect the slab above to prevent spread of fire to the floor above? Based on the foregoing, the Fire Department respectfully requests that the Board of Standards and Appeals not accept this application as filed. Plans shall be revised to show compliance with Section 504.4.1 for Fire Department Rooftop Access. By correspondence dated September 23, 2021, the Fire Department states the Fire Department, Bureau of Fire Prevention has reviewed the revised application and plans. While the application and plans have been revised to reduce the number of units and the height, the Fire Department’s “Letter of Objection” for rooftop access is still applicable. Access to the rooftop needs to provide across the building parapet and a safe landing provided as described in Section 504.4.1 of the New York City Fire Code.

V.

Over the course of the hearings, the Board expressed concerns about the feasibility of the proposed plans, the accuracy of the as-of-right plans, and the history of ownership at the subject site. In response, the applicant revised the proposed plans to reduce the project from a six-story, three-family residence to a four-story, two-family residence with the elimination of requested waivers for minimum lot area (Z.R. § 23-32) as well as a reduction in the degree of noncompliance in height and setback (Z.R. § 23-631). Additionally, the applicant submitted revised as-of-right plans and a single and separate deed search to verify that the Premises were owned separately from all adjacent properties since December 5, 1961.

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*, the construction of a detached, two-family, four-story residence that does not comply with the zoning requirements for front yards (Z.R. § 23-45), street wall, total height, and setback (Z.R. § 23-631), floor area/FAR (Z.R. § 23-143), and zero lot line buildings (Z.R. § 22-00); *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received December 22, 2021”–Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a zero lot line building with a maximum floor area of 2,828 square feet (1.88 FAR); two front yards measuring a minimum of 5'-0" each; and a maximum total height of 41'-3";

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-67-BZ”), shall be obtained within four years, by January 10, 2026;

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 10, 2022.

2020-77-BZ

APPLICANT – AMP Architecture, PLLC Anthony Portillo & Douglas Scharadin for Gerald Maya, owner.

SUBJECT – Application September 29, 2020 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR 23-45 (front yard setback). R3-1 zoning district.

PREMISES AFFECTED – 68 Austin Avenue, Block 3116, Lot 89, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative:.....0

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 8, 2020, acting on Alteration Type 1 Application No. 510113618, reads in pertinent part: “ZR 23-45 - Provide compliance with permitted obstructions in required front yard: 15”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R3-1 zoning district, the enlargement of an existing single-family, three-story, detached residence that does not comply with the zoning requirements for front yard setback (Z.R. § 23-45).

A public hearing was held on this application on October 19, 2021, after due notice by publication in *The City Record*, and then to decision on January 10, 2022. Community Board 2, Staten Island, recommends approval of this application. The Board also received five form letters in support of this application.

The Premises are located on the west side of Austin Avenue, between Robin Road and Cedar Avenue, within an R3-1 zoning district, on Staten Island. With approximately 50 feet of frontage along Austin Avenue, 118 feet of depth, and 5,900 square feet of lot area, the Premises are occupied by an existing three-story, single-family detached residence.

I.

The existing residence is a three-story, single-family detached residence with approximately 2,728 square feet of floor area (0.46 FAR); one side yard with a width of 3.9' and one side yard with a width of 11.7' for a total side yard of 15.6'; a front yard measuring 1.1'; and a rear yard with a depth of 30.7'. At the Premises, a front yard with a minimum

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depth of 15 feet is required, pursuant to Z.R. § 23-45, and two side yards, with a minimum width of 5 feet and a total side yard width of 13 feet, are required pursuant to Z.R. § 23-461.

The applicant seeks to legalize the existing conditions regarding the garage at the Premises and its intrusion into the front yard and represents that it is financially infeasible to remove a large front portion of the residence so that the Premises are in compliance with applicable provisions of the Zoning Resolution.

II.

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.

A.

First, as per Z.R. § 72-21(a), 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. More particularly, the applicant argues that the lot is extremely long and narrow, creating an irregularly long rectangular shape that bends toward Austin Avenue. The applicant notes that the existing residence has a narrow side yard with a depth of 3.9'; is 13.45' from the property line; the corner of the garage is 1.1' away from the property line; and the rear yard has a depth of 30.7'.

B.

Next, as per Z.R. § 72-21(b), the applicant submits, that, because the applicant is a single-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant argues that it would not be financially feasible to remove a large portion of the existing residence such as the garage, and due to the narrow size of the lot, there is no proposed enlargement of the building footprint.

C.

As per Z.R. § 72-21(c), 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.

D.

In regard to Z.R. § 72-21(d), the applicant states that no self-created hardship or practical difficulties were created by the owner or the predecessor in title. In support of this contention, the applicant submitted a Sanborn Map from 1937 which shows the Premises as a vacant lot although not in its current configuration. Instead, the Sanborn Map shows that the garage in the front yard of the Premises was constructed after 1961 and is not a pre-existing non-complying condition but may be the result of illegal construction.

E.

As per Z.R. § 72-21(e), the applicant submits that the minimum variance relief would be waiver of the front yard

setback requirements to facilitate accessory off-street parking at the Premises.

III.

At hearing, the Board expressed concerns about the incompleteness of the submitted application. For example, the Board described how the applicant failed to submit an argument and proof to substantiate the required Z.R. § 72-21(a) finding, including, but not limited to, a uniqueness study, as-of-right plans, and a discussion of the parking requirements in an R3-1 zoning district so as to aid the Board in its analysis of the application.

Furthermore, the applicant did not provide information on the history of the construction of the garage at the site as it is located within the required front yard setback; support for its Z.R. § 72-21 (c) argument such as a neighborhood character study and a front yard study to support the requested front yard setback waiver; or proof for its Z.R. § 72-21 (d) claims, as the applicant submitted a single 1937 Sanborn Map which shows a vacant lot and does not establish the existing building and permitted noncomplying conditions at the Premises.

Moreover, the Board noted that the applicant incorrectly analyzed zoning compliance of the Premises including claims that the illegal garage in the front yard is a permitted obstruction in a required yard, pursuant to Z.R. § 23-44(a)(14)(iii) and that the front yard is an existing non-complying front yard, under Z.R. § 54-31, without any support because these provisions are inapplicable at these Premises; incorrect calculations of floor area and locations of living space on submitted plans; and multiple errors on the zoning chart as several sections that were cited are not pertinent to the R3-1 Zoning District or the Lower Density Growth Management Area site.

Specifically, the Board discussed that, assuming the Premises are a legal two-family dwelling, which is the maximum permitted occupancy at the Premises, two accessory off-street parking spaces are required. Given the 11-foot-wide side yard and 30-foot-deep rear yard, the applicant can accommodate the required parking for the Premises within the side lot ribbon and rear yard in compliance with underlying zoning requirements. Therefore, the hardship complained of, that the applicant cannot accommodate its parking requirement but for the garage, fails as the condition to which the applicant claims as a basis for the variance can be resolved as of right.

Based upon its review of the record, the Board has determined that this approval is not eligible for relief under Z.R. § 72-21 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, January 10, 2022.

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2020-81-BZ

APPLICANT – Michael Scaduto AIA, PLLC, for Beerinder Rodey, owner.

SUBJECT – Application October 9, 2020 – Variance (§ 72-21) to permit parking contrary to ZR § 25-20 for a two-family (2) home. R5 zoning district.

PREMISES AFFECTED – 220 East 2nd Street, Block 5324, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative:.....0

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 21, 2020, acting on Alteration Type 1 Application No. 321721259, reads in pertinent part: “Parking Required per 25-20. Provide Parking Easement Agreement.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R5 zoning district and the Special Ocean Parkway District, parking for a three-story, with cellar, two-family, detached residence, contrary to Z.R. §§ 25-22 (a) and 25-621(b).

A public hearing was held on this application on October 19, 2021, after due notice by publication in *The City Record*, and then to decision on January 10, 2022. Community Board 12, Brooklyn, waived its recommendation of this application. The Board received one form letter in support of this application.

I.

The Premises are located on the west side of East 2nd Street, between Caton Avenue and Albemarle Road, within an R5 zoning district and the Special Ocean Parkway District, in Brooklyn. With approximately 30 feet of frontage along East 2nd Street, 125 feet of depth, and 3,750 square feet of lot area, the Premises are occupied by an existing three-story, with cellar, two-family, detached residence.

II.

The existing residence is a three-story, with cellar, two-family detached building with a total floor area of approximately 2,900 square feet; an FAR of 0.77; one side yard to the north with a width of 3'-1" and one side yard to the south with a width of 5'-0"; a front yard measuring 20'-2"; and a rear yard with a depth of 62'-3" at the first floor and above. Within the subject R5 zoning district, one parking space is required for each dwelling unit, pursuant to Z.R. § 25-22(a), and all accessory off-street parking spaces shall be located within or to the side or rear of buildings containing residences, as per Z.R. § 25-621(b).

The Premises, as a two-family dwelling, requires two accessory off-street parking spaces. The applicant seeks to vary the parking requirement under Z.R. § 25-22(a), as well as the requirement that accessory off-street parking spaces be located in the rear or side yard of the building. Instead,

the applicant seeks to provide a single parking space in the front yard of the Premises. The applicant states that the existing footprint of the building, which predates the applicable parking requirement, would not permit such a modification as the side yards are too narrow to permit vehicular access to the rear yard. The applicant represents that the proposed parking space would encroach into the existing front yard, thereby, reducing the front yard depth from 20'-2' to 19'-1". The applicant proposes to extend an existing curb cut shared with an adjacent property to provide access to the parking spot from the street and represents that no additional work to the sidewalk or street at the property would be necessary.

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.

A.

First, as per Z.R. § 72-21(a), 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. More particularly, the applicant notes that the subject property’s design and placement on the lot is due to the original 1910 design. The applicant further argues that because the residence was built before the rest of the dwellings on the block and predates the automobile era, no considerations were made for parking in the design or siting on the lot. Furthermore, the applicant states that neighboring properties were developed in a manner to maximize their side and rear yard access for car parking while simultaneously narrowing the car parking potential at the Premises. The applicant posits that the Premises are irregular and unique as compared to the surrounding properties in the area because it does not have a practical means of providing accessory off-street parking.

In support of this contention, the applicant submitted a site survey of the property, arguing that due to the existing conditions such as the dimensions of the lot, the dimensions of the house, and its position on the lot, there is no side yard of an adequate 8'-0" dimension to permit parking or access to the rear yard for parking on the Premises. The applicant notes that the north side yard varies between 3'-1" to 1'-4" clearance, and the south side yard varies between 6'-0" to 3'-8" clearance. Pursuant to Z.R. § 25-62, a driveway requires 8'-0", and a parking space requires 8'-5" clearance.

B.

Next, as per Z.R. § 72-21(b), the applicant submits, that, because the applicant is a two-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant argues that because the Premises are left without on-site parking, it is left at a financial disadvantage with respect to its neighbors. The applicant argues that the subject variance allowing for a single parking spot in the front yard would aid in alleviating all parking concerns caused by the narrow lot width.

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C.

As per Z.R. § 72-21(c), 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 surrounding neighborhood has several cars on the block and parked in existing front yard parking areas or in the portion of driveway access in side yards, the introduction of one additional parking spot would conform to the current and existing character of the neighborhood without negatively altering it. The applicant further argues that the addition of off-street parking at the Premises would result in the reduction of the number of cars occupying curbside street parking spaces while not reducing the number of such spaces.

In support of this contention, the applicant submitted a neighborhood character study which surveyed the area within 400 feet of the Premises (“the Study Area”) and found that the introduction of one new front yard parking space would not increase vehicular traffic, noise, or air quality concerns as it would not alter the number of already existing cars in use within the neighborhood.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title, as per Z.R. § 72-21(d) and argues that any complexities caused by the narrow lot width existed at the time of the original certificate of occupancy in 1953.

E.

As per Z.R. § 72-21(e), the applicant submits that the variance requested is the minimum necessary to afford relief. Specifically, the applicant acknowledges that while it would like to provide the required two accessory off-street parking spaces at the Premises, it concedes the general infeasibility due to the existing narrow lot width and depth of the front yard and, instead, requests a variance for a single parking space in the front yard of the Premises.

IV.

At hearing, the Board questioned the basis for the applicant’s request for relief. Specifically, the Board stated that, while the residence was constructed at a time that predated onsite parking requirements, nothing in the record demonstrates that parking is now required at the Premises and thus the requested variance is a desire and not required to alleviate a hardship. The Board noted that because the application materials did not demonstrate that the norm in the surrounding area demanded the use of a car and onsite parking, and supporting evidence revealed that the Premises are within a transit zone and in close proximity to two subway stations, the applicant had failed to establish a hardship finding. Moreover, the Board stated that even though DOB had issue with the final determination, noted above, there is no evidence in the record or otherwise that onsite parking is now required at the Premises by the Zoning Resolution, whereas a proposed conversion or enlargement would have triggered a new parking

requirement.

The Board also commented that the applicant’s statement of facts was incomplete as it failed to discuss the applicable zoning requirements for the Special Ocean Parkway District regulations and the potential waivers that may be necessary due to the Premises’ location. Furthermore, the Board questioned whether the existing driveway and curb cut that would be used to access the parking space for the Premises and which are located next to a fire hydrant would comply with New York City Department of Transportation rules that prohibit vehicles from driving over the sidewalk at an angle to access a parking space and also require a minimum distance between the hydrant and driveway splay.

Based upon its review of the record, the Board has determined that this approval is not eligible for relief under Z.R. § 72-21 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, January 10, 2022.

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to April 4-5, 2022, at 10 A.M., for adjourned hearing.

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for adjourned hearing.

MINUTES

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for decision, hearing closed.

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 5th Avenue, Block 6109, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #10BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for decision, hearing closed.

2020-43-BZ

APPLICANT – Law Office of Christopher Wright PLLC, for Zan Optics Products Inc., owner.

SUBJECT – Application May 21, 2020 – 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.

PREMISES AFFECTED – 982 39th Street, Block 5583, Lot 0068, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for decision, hearing closed.

2020-84-BZ

APPLICANT – Goldman Harris II LLC, for Institute for Community Living Inc., owner.

SUBJECT – Application October 28, 2020 – Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area (§23-153) and density (§23-22). Special Permit (§73-623) seeking waivers of height, setback (§23-662(a)) and rear yard (§23-471 and §23-52) regulations for a Quality Housing Building. R6 zoning district.

PREMISES AFFECTED – 161 Emerson Place, Block 1909, Lot 0001, Borough of Brooklyn

COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for decision, hearing closed.

PUBLIC HEARINGS MONDAY-TUESDAY, JANUARY 10-11, 2022

2:00 P.M.

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

ZONING CALENDAR

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021 – Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district.

PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for postponed hearing.

MINUTES

2021-32-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yehuda Eckstein, owner.

SUBJECT – Application May 24, 2021 – Special Permit (§73-622) to permit the enlargement of an existing home contrary to ZR §23-141 (FAR and OSR); ZR §23-47 (rear yard) and ZR §23-461(a) (side yard). R2 zoning district.

PREMISES AFFECTED – 1471 East 26th Street, Block 7680, Lot 18, Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

CORRECTION

This resolution adopted on July 25, 2017, under Calendar No. 258-15-BZ and printed in Volume 102, Bulletin No. 31, is hereby corrected to read as follows:

258-15-BZ

CEQR #16-BSA-052K

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application November 18, 2015 – Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16th Street, Block 7460, Lot 96, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 13, 2016, acting on New Building Application No. 321239619, reads in pertinent part:

“Proposed development is contrary to ZR 36-21 and requires a special permit pursuant to ZR Section 73-44”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in a C4-2 zoning district, a reduction in the required number of accessory parking spaces for an ambulatory diagnostic or treatment facility in Use Group 4 and for Use Group 6 offices in parking requirement category B1, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in The City Record, with continued a hearing on May 23, 2017, and then to decision on July 25, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application, stating that the site is located near a major traffic hub with limited parking; and

WHEREAS, the subject site is located on the east side of East 16th Street, between Avenue Z and Sheepshead Bay Road, in a C4-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along East 16th Street, 100 feet of depth, 2,500 square feet of lot area and is occupied by a two-story residential building; and

WHEREAS, the applicant proposes to develop a five-story mixed-use commercial and community-facility building with 8,696 square feet of floor area (3.48 FAR),

4,004 square feet of which will be used for a Use Group 4 ambulatory diagnostic or treatment facility and 4,692 square feet of which will be used for Use Group 6 offices; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 13 spaces are required for the Use Group 4 ambulatory diagnostic or treatment facility and 16 spaces are required for the Use Group 6 offices, calculated at a rate of one per 300 square feet of floor area; however, the applicant seeks to provide 14 parking spaces, 15 fewer than required and, accordingly, seeks the relief requested herein; and

WHEREAS, the applicant submits that, upon grant of this relief, waiver of the remaining 14 parking spaces will be sought pursuant to ZR § 36-231, which allows the waiver of all accessory parking in cases where the total number of required accessory off-street parking spaces is less than 15; and

WHEREAS, the Board takes no position as to whether approval of the subject special permit application qualifies the site for a parking waiver pursuant to ZR § 36-231, which is a determination subject to review by DOB; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET
PARKING SPACES REQUIRED FOR
AMBULATORY DIAGNOSTIC
OR TREATMENT FACILITIES LISTED
IN USE GROUP 4 AND
COMMERCIAL USES IN PARKING
REQUIREMENT CATEGORY B1

Parking Spaces Required
Per Number of Square

Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3

MINUTES

M2-1 M2-2 M3-11
per 800 C1-3 C2-3 C4-3 C7 C8-2

* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices from one space per 300 square feet of floor area to one space per 600 square feet provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit indicating that the proposed building will be used for a Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the Use Group 4 ambulatory diagnostic or treatment facility or Use Group 6 offices is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed ambulatory diagnostic or treatment facility and office use at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, because of concerns expressed by Community Board 15, Brooklyn, and as the Board customarily does with applications under ZR § 73-44, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand during peak hours for parking generated by the proposed uses at the site will be 4 spaces, weekdays from 8:00 a.m. to 9:00 a.m. and from 9:00 a.m. to 10:00 a.m., and that such demand can be accommodated by the 22 on-street parking spaces and 49 off-street parking spaces available in public parking lots from 8:00 a.m. to 9:00 a.m. and 25 on-street parking spaces and 48 off-street parking spaces available in nearby public parking lots from 9:00 a.m. to 10:00 a.m.; and

WHEREAS, the Board notes that the parking study was based on the current operation of the existing medical facility wherein the subject site operates as a radiation and management practice only in tandem with its principal practice at 2632 East 14th Street, Brooklyn, so any change in ownership or in operation would require prior approval from the Board to examine whether the parking demand has changed as a result; and

WHEREAS, the evidence in the record discredits the general assertions of Community Board 15, Brooklyn, and the Board does not find that there is limited parking in the area during periods of peak demand for the proposed Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 16BSA052K, dated December 8, 2016; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated March 9, 2017, the Department of City Planning states that the proposal will not substantially hinder the achievement of any Waterfront Revitalization Program policy; and

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

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

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 §§ 73-44 and 73-03 to *permit*, in a C4-2 zoning district, a reduction in the required number of accessory parking spaces for an ambulatory diagnostic or treatment facility in Use Group 4 and for Use Group 6 offices in parking requirement category B1, contrary to ZR § 36-21, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July

MINUTES

11, 2017” – seventeen (17) sheets; and *on further condition*:

THAT any change in ownership or in operation shall require prior approval from the Board in order to examine whether the parking demand has changed from 4 parking spaces because the parking study considered by the Board was based on the current operation of the existing medical facility wherein the subject site operates as a radiation and management practice only in tandem with its principal practice at 2632 East 14th Street, Brooklyn;

THAT the certificate of occupancy issued for the building within which the Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices are located shall state that no certificate shall thereafter be issued if the Use Group 4 ambulatory diagnostic or treatment facility or 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;

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

THAT a certificate of occupancy shall be obtained within four (4) years, by July 25, 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, July 25, 2017.

***The resolution has been amended. Corrected in Bulletin Nos. 1-4, Vol. 107, dated January 21, 2022.**

BULLETIN

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February 4, 2022

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DOCKETS

New Case Filed Up to January 24-25, 2022

2022-2-A

728 Court Street, Block 00623, Lot(s) 1,20,62, and 93, Borough of **Brooklyn, Community Board: 6**. Application to permit the construction within the unbuilt portion of a mapped street contrary to General City Law §35 and ZR §72-01(g). M3-1 zoning district. M3-1 district.

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4923 Second Avenue, Block 00781, Lot(s) 0001, Borough of **Brooklyn, Community Board: 7**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2D zoning district M1-2D district.

2022-4-BZY

529 President Street, Block 00441, Lot(s) 0053, Borough of **Brooklyn, Community Board: 6**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-4/R6B zoning district M1-4 and M1-4/R6B district.

2022-5-BZY

38-04 11th Street, Block 00474, Lot(s) 0031, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 district.

2022-6-BZY

55 Gansevoort Street, Block 00644, Lot(s) 0060, Borough of **Manhattan, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 district.

2022-7-BZY

38-75 11th Street, Block 00473, Lot(s) 553, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning M1-3 district.

2022-8-BZ

183-01 Horace Harding Expressway, Block 7067, Lot(s) 0011, Borough of **Queens, Community Board: 11**. Variance (§72-21) to permit the enlargement of an existing cellular monopole in excess of permitted height requirement contrary to ZR §33-43. C1-2/R3-1 zoning district. C1-2/R3-1 district.

2022-9-BZY

34 West 38th Street, Block 00839, Lot(s) 0067, Borough of **Manhattan, Community Board: 5**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning M1-6 district.

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

CALENDAR

TELECONFERENCE PUBLIC HEARINGS
FEBRUARY 28 and MARCH 1, 2022
MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, February 28, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday March 1, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

663-63-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Dorp Baptiste Church, Inc., owner.
SUBJECT – Application July 26, 2019 – Amendment of previously approved Special Permits (§§ 73-452 & 73-641). The amendment seeks the proposed enlargement of an existing house of worship (UG 4) (New Dorp Baptist Church) and school (UG 3) (New Dorp Baptist Academy). R3X zoning district.
PREMISES AFFECTED – 46 10th Street, Block 4220, Lot 0029, Borough of Staten Island.
COMMUNITY BOARD #2SI

742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 830 Bay Street Holding LLC, owner.
SUBJECT – Application March 23, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expires May 18, 2021; Amendment to permit a change of use from Automotive Service Station (UG 16B) to Automotive Repair Facility (UG 16B). C1-1/R3-2 zoning district.
PREMISES AFFECTED – 830 Bay Street, Block 2836, Lot 15, Borough of Staten Island.
COMMUNITY BOARD #1SI

290-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Almi Greenwich Associates LLC, owner; Equinox Greenwich Avenue, Inc., lessee.
SUBJECT – Application December 13, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of a physical cultural establishment (Equinox) which expires on March 28, 2020. C1-6/R6 zoning district.
PREMISES AFFECTED – 97 Greenwich Avenue, Block 615, Lot 29, Borough of Manhattan.
COMMUNITY BOARD #2M

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orb Management Ltd., owner; Equinox Hudson Street, Inc., lessee.
SUBJECT – Application January 29, 2021 – Extension of Term of a previously approved Special Permit (§73-36) permitting a Physical Culture Establishment (Equinox Fitness) on the first, ninth and tenth floors of an existing 10-story mixed-use building which expired on January 1, 2021. M1-5 zoning district.
PREMISES AFFECTED – 421 Hudson Street, Block 601, Lot 750, Borough of Manhattan.
COMMUNITY BOARD #2M

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC., owner; Briad Wenco LLC, lessee.
SUBJECT – Application April 28, 2021 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy's) which expired February 2, 2021; Amendment requesting a change in hours of operation contrary to the previous board approval; Waiver of the Rules. C1-2 (R5) zoning district.
PREMISES AFFECTED – 9001 Ditmas Avenue, Block 810, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #17BK

2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner
SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow the development of a commercial building which expired on June 20, 2021, Waiver of the Board's Rules of Practice and Procedures. C8-3 & R7-2 zoning district.
PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.
COMMUNITY BOARD #12M

CALENDAR

ZONING CALENDAR

2017-269-BZ

APPLICANT – David L Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collission Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

2020-69-BZ

APPLICANT – MBA Architects, for William Moses, owner.

SUBJECT – Application September 9, 2020 – Variance (§72-21) Variance (§72-21) to permit the legalization of dwelling units contrary to ZR 42-10. M1-1 zoning district.

PREMISES AFFECTED – 44 New Lots Avenue, Block 3860, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #16BK

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY, JANUARY 24-25, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

837-85-AIII

APPLICANT – William Gati, for Cesar A Linares, owner.
SUBJECT – Application December 14, 2020 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure contrary to Section C26-254.0 of the 1938 Building Code which expired on December 17, 2020. R2 Zoning District.

PREMISES AFFECTED – 166-78 73rd Avenue, Block 6974, Lot 19, 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 Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a previously granted appeal, to permit the operation of medical offices (Use Group (“UG”) 4) in an existing frame structure, that expired on December 17, 2020.

A public hearing was held on this application on January 10, 2022, after due notice by publication in *The City Record*, and then to decision on January 24, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 8, Queens, recommends approval of this application.

The Premises are located on the southwest corner of 73rd Avenue and 167th Street, within an R2 zoning district, in Queens. With approximately 50 feet of frontage along 73rd Avenue, 97 feet of frontage along 167th Street, and 4,800 square feet of lot area, the Premises are occupied by an existing one-story, with cellar, building used as a medical office (UG 4).

The Board has exercised jurisdiction over the Premises since December 17, 1985, when, under the subject calendar number, the Board granted an appeal of a Department of Buildings (“DOB”) decision to permit the use of the first floor as a medical office, with the cellar occupied as laundry and boiler room, within a wood frame (Class IV) building located within the Fire Limits for “Medical Offices,” contrary to Section C26-254.0 of the 1938 Building Code, on condition that construction substantially conform to plans filed with the application; storage not be permitted in the cellar; the appeal be limited to a term of five years; all applicable laws, rules, and regulations be complied with;

and, the conditions appear on the certificate of occupancy.

On May 7, 1991, under the subject calendar number, the Board amended the resolution to extend the term for ten years, to expire on December 17, 2000, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained within one year, by May 7, 1992.

On January 12, 1993, under the subject calendar number, the Board waived its Rules of Procedure and further amended the resolution to extend the time to obtain a certificate of occupancy for 20 months from May 7, 1992.

On August 6, 2000, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term for ten years, to expire December 17, 2010, on condition that the Premises be maintained in substantial compliance with proposed plans 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 approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On April 5, 2011, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire December 17, 2020.

The term having expired, the applicant now seeks an extension. The applicant represents that the Premises continue to be occupied as a medical office and no changes have occurred, or are proposed, to the Premises, which are maintained in accordance with the Board-approved plans. The Premises continue to meet the conditions of the Board’s prior approvals, including that the cellar be used only as a laundry room and boiler room with no storage, the first floor is used as a medical office; the exterior walls are of wood frame construction with 4" brick veneer on the outside, with insulated non-combustible mineral wool batts between studs and plaster on perforated lath; and, the Premises are protected with with four sprinkler heads on the first floor connected to domestic water supply and a hard wired smoke detector in the cellar.

At hearing, the Board stated that, notwithstanding the granted 1985 appeal of the 1938 Building code, the building complied with zoning when constructed; only later was the Zoning Resolution amended to limit community facility floor area in this zoning district and the Premises became a legal non-conforming use. Thus, the Board moved to eliminate the term.

Based upon its review of the record, the Board has determined that the elimination of the 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, 1985, as amended through April 5, 2011, so that as amended this portion of the resolution shall read: “to

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permit the operation of medical offices (Use Group (“UG”) 4) in an existing frame structure with no term; *on condition*:

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 837-85-A”), shall be obtained within one year, by January 24, 2023;

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

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

THAT the Department of Buildings must 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 24, 2022.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for Grigoriy Katsura, owner.

SUBJECT – Application September 11, 2020 – Amendment of a previously approved Special Permit (§73-622) which permitted the enlargement of an existing home; Extension of Time to Complete Construction which expired on September 18, 2019; Waiver of the Board’s Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, Block 8749, Lot 0275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 28, 2020, acting on DOB Alteration Type I Application No. 320821740, reads in pertinent part: “[p]roposed amendment to the ZR 73-622 Special Permit Home Enlargement is contrary to previous approval under BSA Cal. No. 42-08-BZ and must therefore be referred back to the Board of Standards and Appeals.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an amendment to a previously granted special permit, under Z.R. §§ 73-622 and 73-03, that permitted the enlargement and conversion of an existing two-family dwelling to a single-family dwelling, and an extension of time to complete construction and obtain a certificate of occupancy, which expired on September 18, 2019.

A public hearing was held on this application on March 22, 2021, after due notice by publication in *The City Record*, with continued hearings on October 18, 2021, and January 10, 2022, and then to decision on January 24, 2022. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the west side of Girard Street, between Ocean View Avenue and Oriental Boulevard, within an R3-1 zoning district, in Brooklyn. With approximately 60 feet of frontage along Girard Street, 104 feet of depth, and 6,240 square feet of lot area, the Premises are under construction of a proposed single-family dwelling.

The Board has exercised jurisdiction over the Premises since January 27, 2009, when, under the subject calendar number, the Board granted a special permit, under Z.R. §§ 73-622 and 73-03, to permit the proposed enlargement of an existing two-family residence to be converted into a single-family residence, which does not comply with the zoning requirements for floor area, lot coverage, open space, and rear yards, contrary to Z.R. 23-141(b)1 and 23-47; on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the following be the bulk parameters of the building: a floor area of approximately 6,160 square feet; a lot coverage of approximately 42 percent; an open space of approximately 58 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans; DOB confirm that the portions of the existing building be retained as illustrated on the BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar; 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; 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 the plan(s)/configuration(s) not related to the relief granted.

On September 18, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to grant an extension of time to complete construction for a term of four years, to expire on September 18, 2019, and to permit modifications, including raising the building as specified on BSA-approved plans, on condition that all work substantially conform to drawings, filed with the application; substantial construction be completed by September 18, 2019; all conditions from prior resolutions

1 Since the Board’s 2009 approval, the Zoning Resolution has been amended and the text formerly found at Z.R. § 23-141, setting forth the maximum floor area ratio, minimum required open space, and maximum lot coverage permitted in an R3-1 zoning district, is now found in Z.R. § 23-142.

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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 including, without limitation, those regulations applicable to flood plain elevation, excavation and cellar occupancy.

The time by which to complete 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. Additionally, the applicant seeks an amendment to the Board's approval to facilitate a modification to the proposed dwelling. The applicant requests to redesign the roof and attic, which will increase the previously approved floor area from 6,160 square feet (0.99 FAR) to 6,239 square feet (1.0 FAR), the building width, from 44'-2" to 44', and the lot coverage, from 42 percent to 45.5 percent. Specifically, the applicant proposes to modify the floor area on the first floor, from 2,187.6 square feet to 2,176.5 square feet, the second floor, from 2,617.9 square feet to 2,796 square feet, and attic, from 1,354.5 square feet to 1,266.5 square feet including 285 square feet with a ceiling height under 8'.

The applicant represents that the building is constructed up to the second-floor ceiling; however, due to the requested redesign in the roof, the applicant halted construction pending Board approval. In response to Board question, the applicant explained that, to comply with Appendix G requirements, DOB instructed the applicant to modify the areas on the plans previously indicated as "unexcavated" to reflect "crawl space," except for the area under the front porch which has no occupiable space above it. Additionally, the height of the roof ridge line was reduced to 30'-8" to comply with zoning requirements for building height and DOB Technical Policy and Procedure Notice # 13/88.

The applicant represents that the proposed residence will continue to be 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, finding that, of the 62 qualifying residences, 63 percent (39 residences) have an FAR greater than 0.5, ranging from 0.51 to 1.01, including the three residences immediately adjacent to the Premises.

Based upon its review of the record, the Board has determined that the evidence in the record continues to support the findings required to be made under Z.R. §§ 73-622 and 73-03 and the extension of time to complete construction and amendment to permit modifications to the roof 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 *amends* the resolution, dated January 27, 2009, as amended through September 18, 2015, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for four years, by January 24, 2026; and, to permit modifications to the roof which increase floor area, building width, and lot coverage; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "December 23, 2021"—Eighteen (18) sheets; and *on further condition*:

THAT substantial construction shall be completed by January 24, 2026;

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 6,239 square feet; a maximum lot coverage of approximately 45.5 percent; a minimum open space of approximately 54.5 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-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 all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 42-08-BZ"), shall be obtained within four years, by January 24, 2026;

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 24, 2022.

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CORRECTION: This resolution adopted on January 24, 2022, under Calendar No. 24-09-BZ, is hereby corrected to read as follows:

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”) and an extension of time to complete construction, which expired on July 26, 2015, of a variance granted pursuant to Z.R. § 72-21 permitting the enlargement of a Use Group (“UG”) 3 community facility.

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 June 29, 2020, December 14, 2020, February 8, 2021, April 26, 2021, September 27, 2021, and November 29, 2021, and then to decision on January 24, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

The Premises are located on a corner (tax lot 12) through lot bounded by 164th Street to the east, 78th Avenue to the north, and 78th Road to the south, within a R3-2 zoning district, in Queens. The site consists of five tax lots (Lots 9, 11, 12, 23, and 24), with approximately 200 feet of frontage along 164th Road, 157 feet of frontage along 78th Avenue, 143 feet of frontage along 78th Road, 29,933 square feet of lot area.

The site is currently occupied by a preexisting, non-complying, four-story, including basement, 31,580 square foot nursing care facility with 143 beds on Lot 12. Lots 9, 11, 23 and 24 are occupied by two two-and-one-half story, three-story, and one-story residences respectively. Lot 23 is occupied by a three-story, mixed-used commercial and residential building with an office on the ground floor with two residences on the second and third floors.

The Board has exercised jurisdiction over the Premises since July 26, 2011, when, under the subject calendar

number, the Board granted a variance, under Z.R. § 72-21, to permit, in a R3-2 zoning district, the horizontal enlargement of an existing four-story, including basement, nursing care facility (UG 3) which does not comply with the required FAR, front yard depth, lot coverage, wall height and sky exposure plane, and rear yard, contrary to Z.R. §§ 24-11, 24-34, 24-521, and 24-382, on condition that any and all work substantially conform to drawing as they apply to the objections, filed with the application; the following be the bulk parameters of the building: 60,366 square feet of floor area (2.02 FAR); a front yard of 9'-7" along 164th Street; lot coverage of 73 percent for the corner lot portion of the site; a wall height of 34'-8"; intrusion into the sky exposure plane; and intrusion into the required rear yard equivalent for the through lot portion of the site, as indicated on the BSA-approved plans; prior to the issuance of any Department of Buildings (“DOB”) permits, the applicant obtain a certification from the City Planning Commission pursuant to Z.R. § 22-42; prior to the issuance by DOB of a temporary or permanent certificate of occupancy, the applicant or successor obtain from DEP a Notice of Satisfaction; all garbage remain within the designated trash compactor area until pickup, which occur no earlier than 7:30 a.m.; substantial construction be completed pursuant to 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)/configuration(s) not related to the relief granted.

The time to complete construction having expired, the applicant now seeks an extension. Because this application was filed less than four years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules, of § 1-07.3(c)(3), of the Board’s Rules to permit the filing of this application.

Since the Board’s initial approval, the applicant states that it has not commenced construction, citing (1) construction costs, (2) City Planning approval delay, (3) facility administrator turnover, (4) changed project architect, and (5) managerial repayment issues as reasons for the delay. In this application, the applicant represented that the factors that had caused the long delay were no longer applicable as the Premises had come under new management, and along with existing ownership, were in discussion to partner with an experienced nursing care developer who could assist in this enlargement. However, after submitting this application for an extension of time to complete construction, the applicant requested multiple long adjournments of the case, citing delays due to the COVID-19 pandemic.

Over the course of hearings, the Board raised concerns regarding the maintenance of the site, which the Board described as neglected, as it contained miscellaneous debris, including hazardous waste, in a large storage container;

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open refuse and oxygen tanks near the entrance of an adjacent residence; and unguarded trailers containing medical waste. Furthermore, the Board noted that one of the buildings at the subject lot which is intended for residential use was being unlawfully used for commercial purposes. The Board cited multiple FDNY and Environmental Control Board (“ECB”) violations, including failure to maintain the sprinklers on the Premises, which the applicant had failed to address over many years. On multiple occasions, the Board directed the applicant to clean up the site, increase the frequency of trash pickup of the medical waste, put up a fence to secure the site, and stop the illegal commercial use at the Premises, to which the applicant failed to respond or take any action. Consequently, Board members and the Board’s Compliance Officer visited the Premises and documented its unkempt state, finding it poorly maintained with waste strewn all over the property, including an abandoned vehicle. Due to the applicant’s refusal to respond to the Board’s many directions regarding the nature of the site, the Board questioned whether the applicant had abandoned its prior vested rights in the variance approval, as per the decision in *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10 (2d Dep’t 1976).

The court in the *Putnam Armonk* decision articulated a three-prong standard to decide whether or not to honor prior a vested right grant or to enforce application of the then current, and more restrictive, zoning ordinance, stating:

[. . .](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[. . .]

Putnam Armonk, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 542 (1976).

In response, the applicant submitted a statement to the Board distinguishing the current situation from the facts in the *Putnam* Test. First, the applicant represents that it has not taken any overt act to abandon its original plan to enlarge the facility. The applicant states that in the *Putnam* case, the property was sold, and the litigation to preserve certain vested rights were pursued by the subsequent purchaser. Here, the applicant argues that specific actions have been undertaken by the applicant after the prior grant that indicate an intent to pursue the enlargement, not abandon it. The applicant describes how, in 2014, it sought a special permit from the New York City Planning Commission (“CPC”), an approval—which was necessary at the time for certain nursing home enlargements and indicated an intent to pursue the enlargement project after the Board approval—and is no longer necessary for the enlargement of this nursing facility.

The Board notes that the applicant took these actions

at CPC almost six years before it returned to the Board to seek an extension of time to complete construction, during which time it had failed to commence construction. The Board also rebuts that the applicant is not able to get a Certificate of Need from the New York State Department of Health (“DOH”) to build the approved project because it has low occupancy rates, an issue which existed in 2019, and therefore, the initial grant may have been premature. In response, the applicant clarified that the purpose of the prior grant was to create more rooms but no additional beds in hopes of not having rooms with three to four beds.

As to recoupment, the applicant states that the decision to seek the prior approval was driven by its desire to bring an aging facility into the 21st century with an enlarged and modernized building. The applicant cites the fact that the Board noted in its prior resolution that various as-of-right, as-is, and lesser variance scenarios all produced failing economic outcomes. The applicant declares that those circumstances remain unchanged and are arguably exacerbated with the passage of time and the continued aging of the facility. The applicant distinguishes *Putnam Armonk* by pointing to the fact that in *Putnam*, the long-ago sale of the many houses in sections one and two of the overall development site indicate that original investment monies may have been recouped. Furthermore, the applicant claims that the sale of sections three and four in the *Putnam* may have resulted in a windfall for the seller and could be deemed to constitute a recoupment. The applicant contends that no such phasing or sales have taken place that could be construed as enabling it to have recouped the financial stress experienced by the aging facility.

As to the third part of the *Putnam* Test, the applicant describes a balancing test that weighs considerations of public safety, health, and welfare against the historical vested right or granted variance. The applicant summarized the *Putnam* case as one where there was a very specific evolution of circumstances regarding physical site conditions that made clear that application of the new density regulations constituted significant benefit to the public, a benefit that would override the developer’s vested right. Additionally, the applicant contends that when the first portion of the original *Putnam* development was constructed it became clear that the site was troubled with chronic soil drainage problems and water supply problems that could have adverse impacts on the municipality at-large. The applicant distinguishes the present circumstances by stating that here, no such public safety, health, and welfare conditions are newly present in the context of the proposed enlargement as the storage and material found at the site is comparable to other nursing facilities. The applicant argues that the Board’s findings in the prior grant remain intact and there have been no changes in the neighborhood conditions or otherwise that render the proposed enlarged facility a risk to public safety, health, and welfare. Moreover, the applicant states that none of the *Putnam* Test prongs have been met, there has been no abandonment of the variance, there has been no financial recoupment and there is no change in conditions that

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constitutes countervailing public safety, health, and welfare issue that warrants not extending the time to complete construction of the proposed enlargement.

The Board notes that the applicant's description of the nature of the subject Premises as comparable to other medical facilities failed to take into context its location in a residential district. Although the applicant described the trailers on the property as temporary structures, the Board requested that DOB and DOH inspect the exterior portion of the Premises. Additionally, the applicant sought a Zoning Resolution Determination ("ZRD1") from DOB to exempt the storage containers in the side yard from floor area and accept the storage container encroachment into the required side yard. DOB approved the applicant's request to exempt the storage containers in the side yard from floor area because the storage containers are not buildings as defined in the Zoning Resolution, therefore, the areas within the storage containers do not meet the definition for floor area or lot coverage. In addition, DOB approved the applicant's request to accept the storage container encroachment into the required side yard on condition that all storage containers encroaching into the required eight-foot-wide side yard are removed or relocated to any open areas in the zoning lot not in any required yard.

Subsequently, the applicant complied with the Board's and DOB's directions and submitted photographs of a nearly installed fence that was modified to prevent the outward swing of the fence's gate so as not to swing out over the sidewalk or street.

The Board notes that the subject Premises is a problematic site as to its relationship to its neighbors, and, as such, the Board will continue to monitor the Premises over the course of the term of this requested four-year extension of time to complete construction. Specifically, the Board's Compliance Officer will visit the Premises every six months, document the site conditions through photographs, and report to the Chair in order to ensure that the area around the side yard and around the site is being maintained and that the trailers have been removed and kept out of any required yard as per DOB instruction.

By letter dated November 24, 2021, the Fire Department states that it is in receipt of the approved DOB sprinkler plans for the above-referenced Premises and has no additional comments with respect to the use of anti-freeze in the sprinkler piping serving the trailers. Based upon the foregoing the Fire Department has no further objection to the application. 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 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 *amend* the resolution dated July 26, 2011, so that as amended, this portion of the resolution shall read: "to extend the time to complete construction for four years, to

expire on January 24, 2026, *on condition*:

THAT the following shall be the bulk parameters of the building: 60,366 square feet of floor area (2.02 FAR); a front yard of 9'-7" along 164th Street; lot coverage of 73 percent for the corner lot portion of the site; a wall height of 34'-8"; intrusion into the sky exposure plane; and intrusion into the required rear yard equivalent for the through lot portion of the site, as indicated on the BSA-approved plans;

THAT prior to the issuance by DOB of a temporary or permanent certificate of occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT all garbage shall remain within the designated trash compactor area until pickup, which occur no earlier than 7:30 a.m.;

THAT the sidewalk and parking area shall be repaired or replaced as necessary to be maintained in first-class condition at all times;

THAT the gate shall not swing onto the sidewalk;

THAT the sprinklers be maintained in accordance with Fire Department direction;

THAT the trailers shall be removed and maintained out of the required side yard in accordance with DOB direction;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, within four years, by January 24, 2026;

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. 24-09-BZ"), shall be obtained within four years by January 24, 2026;

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 24, 2022.

378-45-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§ 11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubricatorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard,

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Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for decision, hearing closed.

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 May 23-24, 2022, at 10 A.M., for adjourned hearing.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for adjourned hearing.

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 150th Street, Block 12116, Lot 0001, Borough of Queens.

COMMUNITY BOARD # 12Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for deferred decision.

7-95-BZIII

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.

SUBJECT – Application August 30, 2016 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 8, 2016; Amendment to permit a change in hours of operation. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for decision, hearing closed.

171-97-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Rocco Sacco, owner.

SUBJECT – Application August 31, 2021 – Extension of Term of a previously approved variance which permitted the operation of a trade school (UG 9), eating and drinking establishment (UG 6), retail (UG 6) and accessory uses which expired on October 20, 2018; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 65-01 Kissena Boulevard, Block 6742, Lot 10, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

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299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

12-01-BZII

APPLICANT – Greenberg Traurig, LLP, for German Rodriguez, owner.

SUBJECT – Application November 2, 2020 – Amendment or Extension of Term of a previously approved Variance (§72-21) which permitted the development of a one-story commercial building (UG 6) with 93 accessory parking spaces which is set to expire on July 17, 2021. The application seeks to change to remove the Board’s condition of term. R4 zoning district.

PREMISES AFFECTED – 2829 Edson Avenue, Block 4800, Lot 0018, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over TBD.

13-01-BZ

APPLICANT – Greenberg Traurig LLP, for Extra Spaces Properties Two LLC, owner.

SUBJECT – Application March 22, 2021 – Amendment of a previously approved Variance (§72-21) which permitted a five-story (UG 16) self-storage facility which will expire on July 17, 2021. Amendment to legalize minor deviations from the BSA approved plans for parking, landscaping, interior floor plans, and accessory building signs. Request for an extension of Term for twenty (20) years. R4 zoning district.

PREMISES AFFECTED – 2875 Edson Avenue, Block 4800, Lot 6, Borough of Bronx.

COMMUNITY BOARD # 12BX

ACTION OF THE BOARD – Laid over TBD.

160-08-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for HJC Holding Corp., owner.

SUBJECT – Application February 5, 2021 – Extension of Term of a previously approved Variance (§72-21) permitting commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B) which expired on July 13, 2013; Amendment to eliminate the accessory fuel storage and motor vehicles sales and repair use; Extension of Time to

obtain a Certificate of Occupancy which expired on January 13, 2012; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Block 4527, Lot 0000, Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for decision, hearing closed.

197-08-BZIV

APPLICANT – Law Office of Jay Goldstein, for Carroll Gardens Realty LLC, owner.

SUBJECT – Application June 9, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a four-story and penthouse residential building which expired on June 18, 2021. R4 district.

PREMISES AFFECTED – 341 Troy Avenue, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for postponed hearing.

36-11-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 270 Greenwich Street Associates, owner for Soul Cycle Tribeca lessee.

SUBJECT – Application January 13, 2021 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (SoulCycle) which expired on January 15, 2020, Waiver of the Board’s Rules of Practice and Procedures. C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street, Block 142, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to PCE for adjourned hearing.

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post Industrial Thinking LLC, owner.

SUBJECT – Application January 7, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of two 3-story single family residences which expired on January 12, 2020; Waiver of the Board’s Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 8-10 Underhill Avenue, Block 1122, Lot 37, Borough of Brooklyn.

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COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for deferred decision.

2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved General City Law § 35 waiver to construct a two-story mixed-use commercial and residential building within the bed of a mapped street which expires on July 25, 2021. C1-3/R4 Special Hillside Preservation District.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2016-900-A, 2016-981-A, 2016-992-A, 2016-1058-A

APPLICANT – NYC Housing Preservation and Development, for Project Rebuild Inc., owner.

SUBJECT – Application August 24, 2021 – Amendment application for four (4) previously approved GCL 36 applications previously part of the NYC Build it Back program, under the acquisition pathway. NYC HPD “Project Rebuild” has acquired these properties for demolition and reconstruction of a affordable, resilient housing. Amendment request under BSA Rule 1-06.1(f) to modify the Board's condition that the approval be limited to the Build it back Program.

PREMISES AFFECTED – 25 Wavecrest Street, Block 4081, Lot 0027, 16 Topping Street, Block 4085, Lot 0046, 18 Center Place, Block 4084, Lot 0049, 54 Seafoam Street, Block 4081, Lot 0061. 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

2016-2712-A, 2016-2459-A, 2016-2424-A, 2016-2426-A, 2016-2425-A, 2016-2468-A, 2016-2431-A, 2016-2715-A, 2016-2741-A, 2016-2745-A, 2016-3827-A, 2016-3826-A, 2016-3093-A, 2016-3117-A

APPLICATION – NYC Housing Preservation and Development, for Project Rebuild Inc., owner.

SUBJECT – Amendment application for fourteen (14) previously approved GCL 35 applications previously part of

the NYC Build it Back program, under the acquisition pathway. NYC HPD “Project Rebuild” has acquired these properties for demolition and reconstruction of a affordable, resilient housing. Amendment request under BSA Rule 1-06.1(f) to modify the Board's condition that the approval be limited to the Build it back Program.

PREMISES AFFECTED – 770 Patterson Avenue, Block 3873, Lot 0028, 176 Kiswick Avenue, Block 3736, Lot 0020, 181/183/185/187 Moreland Street, Block 3734, Lots 0038/0039/0041, 529 Greeley Avenue, Block 3881, Lot 0001, 1142/1144 Olympia Boulevard, Block 3884, Lots 0014/0015, 457 Lincoln Avenue, Block 3738, Lot 0005, 477/479 Mill Road, Block 4030, Lots 0024/0026, 208/214 Wiman Avenue, Block 5306, Lots 0055/0058. 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th 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 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for deferred decision.

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens. Block 15510, Lot 0011

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for deferred decision.

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ZONING CALENDAR

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 181st Street, Block 2152, Lot 72, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 30, 2019, acting on Application Type Alteration 1 No. 123785939, reads in pertinent part: “ZR 32-10, ZR 32-31, ZR 73-19: A School is not allowed as-of-right in a C8-3 zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval.”

This is an application under Z.R. § 73-19 for a special permit to allow, in a C8-3 (R7-2) zoning district, the operation of a Use Group (“UG”) 3 school, contrary to Z.R. § 32-10. This application is brought on behalf of the Washington Heights and Inwood Music Community Charter School.

A public hearing was held on this application on July 28, 2020, after due notice by publication in *The City Record*, with continued hearings on October 20, 2020 and January 12, 2021, and then to decision on January 24, 2022. Community Board 12, Manhattan, recommends approval of this application with the following conditions:

The Community Board requests that Washington Heights and Inwood Music Community Charter School continue to provide updates to the Health and Environment, Traffic and Transportation, and Youth and Education committees as the Project progresses and as the planning begins for the commencement of school operations at the site, and also to explore opportunities to work with nearby schools, community-based organizations such as ARC XVI Fort Washington Senior Center and the Esperanza Center, which will be in the adjacent building, businesses, and business organizations such as the Washington Heights Business Improvement District. The Community Board encourages the Washington Heights and Inwood Music Community Charter School to make the auditorium available for community events, including local theater and performing arts productions.

The Board received 22 form letters and 12 letters of support for this application.

The Premises are located on the west side of West 181st Street, between Audubon Avenue and Amsterdam Avenue, within a C8-3 (R7-2) zoning district, in Manhattan. With approximately 75 feet of frontage along West 181st Street, 120 feet of depth, and 8,963 square feet of lot area, the Premises are occupied by an existing four-story plus cellar, mixed-use commercial building and parking garage.

The applicant proposes to convert and enlarge the existing four-story plus cellar, commercial building for full occupancy by a UG 3 kindergarten through fifth grade charter school. The applicant represents that the development would involve the conversion of the existing roof level to a usable floor area and the addition of a fifth story, thereby, increasing the building square footage to 36,413 square feet (4.06 FAR). The applicant states that the cellar would include music rooms, two kindergarten classrooms, a building engineer room, restrooms, and mechanical/utility rooms as well as an approximately 722 square feet terrace facing south along the rear building façade; the first floor would contain an auditorium/theater, restrooms, a conference room, a trash room, administrative offices, and a lobby/vestibule fronting 181st street; the second floor would include a cafeteria and warming pantry, two first-grade classrooms, administrative offices, an art classroom, an English as a Native Language (“ENL”) teaching room, a calm down room, and restrooms; the third floor would contain two second-grade classrooms, two third-grade classrooms, a science room, three therapy rooms, a physical therapy room, nurses and counselors’ offices, a programs office, a calm down room for students with Special Needs, restrooms, and an ENL reading room; the fourth floor would include two fourth grade classrooms, two fifth grade classrooms, a calm down room, two ENL/Reading rooms, restrooms, offices and storage; and the fifth floor level would include an approximately 2,533 square feet enclosed gymnasium, storage, and an approximately 1,060 square feet terrace facing north along 181st Street.

By letter dated September 14, 2020, the New York City Department of Environmental Protection (“DEP”) states the July 2020 RAP proposes the excavation, transportation and off-site disposal of soil in accordance with all applicable federal, state and local regulations; if encountered, underground storage tanks will be properly removed and disposed of in accordance with New York State Department of Environmental Conservation (“NYSDEC”) regulations; stockpiled soil will be covered with polyethylene sheeting; dust control; air monitoring; construction and maintenance of composite cover system; installation of a vapor barrier beneath the entire building slab and a long foundation sidewalls consisting of the 20-mil Raven Industries Vapor Block Plus VBP20. The July 2020 CHASP addresses worker and community health and safety during construction. Based upon its review of the submitted documentation, DEP has the following comments and recommendations to BSA: DEP finds the July 2020 RAP

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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., transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; installation of vapor barrier, etc.).

At hearing, the Board expressed concerns regarding the applicant’s proposal that the student pickup and drop-off be located at the entrance on West 181st Street, which contains a curb lane used as a well-trafficked bus lane and bus stop. The Board commented that the applicant’s plan to use this location involved a high risk of harm to students, drivers, and pedestrians. The Board suggested that the applicant use West 180th Street as the location for pickup and drop-off for students who did not require ADA accommodations. Furthermore, by letter correspondence dated January 8, 2021, the New York City Department of Transportation (“DOT”) states:

While DOT agreed to the Project Team’s need for ADA access, with a portion of students and parents needing to use the 181st Street curb lane for pickup/drop-off activity, DOT does not agree with the project allowing all pick-up/drop-off trips from the 181st Street curb lane. As stated previously 181st Street is one of the busiest bus corridors in the city and as such 181st Street presently uses the curb lane as a much needed bus lane/bus stop. We are willing to work with the applicant to create a designated pick-up/drop-off zone for busses and parents, which are not in need of ADA accommodations, on either Amsterdam or Audubon Avenue. DOT would again advise that a loading/unloading zone on Amsterdam Avenue would likely cause the least conflicts with existing curb lanes and sidewalks.

However, the Board observed pushback from the applicant to these suggestions, as it continued to propose the entrance on West 181st Street for student pickup and drop off.

Additionally, the Board noted the air quality, noise and environmental issues outstanding at the Premises. Moreover, the Board requested that the applicant modify its submitted plans to clarify that exterior finishing material and ensure that no Exterior Insulation Finishing System (“EIFS”) would be used at the building.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated January 18, 2022, 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, January 24, 2021.

2020-84-BZ

APPLICANT – Goldman Harris II LLC, for Institute for Community Living Inc., owner.

SUBJECT – Application October 28, 2020 – Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area (§23-153) and density (§23-22). Special Permit (§73-623) seeking waivers of height, setback (§23-662(a)) and rear yard (§23-471 and §23-52) regulations for a Quality Housing Building. R6 zoning district.

PREMISES AFFECTED – 161 Emerson Place, Block 1909, Lot 0001, 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 December 1, 2021, acting on New Building Application No. 321592763, reads in pertinent part:

1. ZR 23-153: Proposed residential FAR exceeds permitted residential FAR for Quality Housing buildings in an R6 zoning district contrary to ZR 23-153.
2. ZR 23-153: Proposed residential lot coverage permitted for interior lots for Quality Housing buildings in an R6 zoning district contrary to ZR 23-153.
3. ZR 23-662(b): Proposed building does not provide the minimum base height for a portion of the street frontage, exceeds the maximum permitted base height for a portion of the street frontage, exceeds the maximum permitted building height, and exceeds the maximum number of stories permitted for Quality Housing buildings in an R6 zoning district contrary to ZR 23-662.
4. ZR 23-22: Proposed number of dwellings units exceeds maximum permitted number of dwelling units contrary to ZR 23-22.
5. ZR 23-471, ZR 23-52: Rear yard of 30’ required by 23-471, reduced to 10’ by ZR 23-52, is not provided.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R6 zoning district, the development of an income restricted supportive and affordable housing residential building contrary to the zoning requirements for floor area (Z.R. § 23-153), density (Z.R. § 23-22), and height and setback (Z.R. § 23-662) and a special permit, pursuant to Z.R. §§ 73-623 and 73-03 seeking rear yard waivers (Z.R. §§ 23-471 and 23-52) for a Quality Housing Building.

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A public hearing was held on this application on May 11, 2021, after due notice by publication in *The City Record*, with continued hearings on November 30, 2021 and January 11, 2022 and then to decision on January 24, 2022. Community Board 2, Brooklyn, recommends approval of this application. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. The Board also received one letter of support for this application.

I.

The Premises are located on the northeast corner of the intersection of Emerson Place and Willoughby Avenue, within an R6 zoning district, in Brooklyn. The Premises are located on an irregularly shaped zoning lot with approximately 52 feet of frontage along Emerson Place, 212 feet of depth, and 10,070 square feet of lot area and are currently occupied by a four-story residence.

II.

Originally, the applicant proposed to construct an 11-story plus cellar Quality Housing building with 60,319 square feet of residential floor area (5.99 FAR), 80 dwelling units, a maximum building height of 110'-8", and a rear yard with a depth of 0 feet at the first floor and above. The applicant represents that none of the units in the proposed project would be transient units, and all would be apartments that qualify as Use Group ("UG") 2 income-restricted housing units and affordable housing units under Z.R. § 23-911. The applicant states that the first floor of the proposed building would contain a tenant lounge, a tenant kitchen, an activity room for childcare, homework assistance, tutoring, and indoor recreation, a family services room for community meetings for residents, four meeting rooms for case managers, a conference room for group meetings and assessments, case managers' offices, and a suite for case managers. The second through ninth floors of the proposed building would contain nine units each, as follows: four studio apartments, one one-bedroom apartment, and four two-bedroom apartments; the 10th floor of the proposed building would contain an additional five units, including four two-bedroom units and one studio apartment; and the 11th floor of the proposed building would contain one one-bedroom unit and one studio apartment.

Over the course of hearing the Board raised concerns about the certain aspects of the proposed building including height and the fact it did not extend across the interior lot portion of the subject Premises. In response, the applicant extended the building to the northern property line of the site, thereby covering the entirety of the interior lot portion and reducing the height of the proposed building. The applicant now proposes to develop a 12-story plus cellar building with 103 units, 80,467 square feet of floor area (7.83 FAR), a maximum height of 130'-4" (with the roof height at 119'-0"), and a maximum of lot coverage of 100%. The applicant states that the cellar in the proposed building would contain mechanical spaces, tenant storage, bike storage, and a building workspace; the first floor would contain a tenant lounge, a tenant kitchen, a fitness center, a

library and computer room, laundry facilities, building storage, and a large indoor play area which can be utilized for both childcare and general recreation, as well as office space, conference rooms, meeting rooms, and a case manager's suite for the applicant's social services staff and the superintendent's unit; the second through tenth floors would contain ten units each, as follows: four studio apartments, two one-bedroom apartments, and four two-bedroom apartments; the 11th and 12th floors would contain an additional six units each, including four two-bedroom units, one one-bedroom unit, and one studio apartment. The applicant represents that 61 of the dwelling units in the proposed building would be reserved for residents enrolled in the Emerson-Davis Program. Additionally, the applicant states that 41 units would be available to the general public and that all of the units in the would remain affordable at 60% Average Median Income ("AMI").

In the subject R6 zoning district, the maximum permitted FAR for Quality Housing is 3.0, which allows for a total of 30,210 square feet of residential floor area (*see* Z.R. § 23-153); the maximum allowable height of Quality Housing is 75'-0" and requires a setback of 10'-0" at 65'-0" (*see* Z.R. § 23-662); the maximum number of units permitted in a building containing 30,210 square feet of residential floor area is 44 (*see* Z.R. §§ 23-15 and 23-22); a rear yard with a minimum depth of 10'-0" at the first floor and above is required (*see* Z.R. § 23-52); and a maximum lot coverage of 73 % is permitted for an interior lot (*see* Z.R. 23-156(a)(1)).

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.

A.

First, the applicant does not assert that there is a unique physical condition which precludes it from earning a reasonable return at the subject Premises. Rather, the applicant seeks relief under the Board's extension of *Cornell Univ. v Bagnardi*, 68 N.Y.2d 583 (1986) deference to qualified developers of affordable housing, as articulated under BSA Cal. No. 2017-190-BZ (the *Catholic Charities* resolution).

In *Catholic Charities*, the Board stated:

[W]hen residents have to spend a large percentage of their income on housing, less money is available for those residents' other basic living needs like food or healthcare," and "the insufficient supply of low-income affordable housing also results in overcrowded housing and familial instability" which may increase the rate of homelessness.

Catholic Charities at 5.

In extending *Cornell* doctrine to affordable housing, the Board stated that it

...must be restricted to (1) not-for-profit entities, (2) with an extensive history of developing and managing 100 % low-income

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affordable housing, (3) for developments with restricted rents that are, in their entirety, targeted to extremely low-, very low- and low-income earners, and (4) that would remain rent-restricted to such earners for the life of the development.

Catholic Charities at 6.

Furthermore, recognizing that without waivers granted under an affordable housing-based extension of the *Cornell* doctrine, “an applicant would be unable to provide enough units to make the development financially viable and would ultimately create zero affordable housing units,” the Board required that

...to avail themselves of this extension of the *Cornell* doctrine to not-for-profit 100 % low-income housing developments, [applicants] would be required to demonstrate that the waivers requested are directly related to the public policy goal justifying the expansion and the entity’s programmatic needs – to wit, the provision of 100 % low-income housing units – and that the waivers requested are the minimum necessary to ensure a viable project that meets State and City requirements for subsidies.

Catholic Charities at 7.

The applicant contends that the *Catholic Charities* resolution stands for the proposition that the creation of permanently affordable housing furthers the public health, safety, welfare, and morals in much the same way as religious and educational institutions do, by advancing a fundamental and well-established interest of the state. The applicant argues that the Board in *Catholic Charities* recognized that the creation of permanently affordable housing for low-income seniors and the formerly homeless as a fundamental state interest similar to education and religion.

Catholic Charities at 2.

The applicant maintains that it is a well-established non-profit developer of affordable and supportive housing with an extensive portfolio of low-income affordable housing. In support of this contention, the applicant submitted a letter from the New York State Office of Mental Health (“OMH”) describing the applicant’s history of extensive, low-income, affordable housing management. Furthermore, the applicant states that the proposed building would be 100% low-income, affordable housing, including both the Family Reunification Program supportive units and the general population units, and all of the units in the building would remain rent-restricted to low-income households (below 60% AMI) for the life of the development. In addition, the applicant states that it has maintained the Family Reunification Program at the subject Premises since 1996, without complaint or incident. Accordingly, the Board finds that it is appropriate to extend the *Cornell* Doctrine to this application as proposed herein

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a nonprofit institution, no

showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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. The applicant maintains that the proposed building would be constructed to its full height, on a scale consistent with the taller residential and institutional buildings in the surrounding area, including the adjacent residential building. The applicant further represents that the building has been designed to fit in with the surrounding neighborhood, using materials typical of both the neighborhood’s historic and contemporary buildings. The applicant also declares that the varied massing of the proposed building and its street wall articulation would ensure that the pedestrian experience is minimally impacted by the development. The applicant contends that the residential use of the proposed building is as of right and consistent with the surrounding residential and institutional uses. Additionally, the applicant states the ground floor uses, which are accessory to the Family Reunification Program, are limited to the building’s residents, and would not lead to an increase in pedestrian or vehicular traffic at the site.

In support of this contention, the applicant submitted an Environmental Assessment Statement (“EAS”) finding that the shadows cast by the proposed building would not have a significant impact on any parks, public open spaces, or historic or architectural resources. Moreover, the applicant provides that the proposed building would provide needed affordable housing and ensure the continuation and expansion of the Family Reunification Program. Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located; would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that it is attempting to develop housing that would remain 100 % affordable to low-income residents for the life of the development and cannot do so if it must adhere to the strict application of the Zoning Resolution. 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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant argues that in order to reduce the scope of the Variance, it has applied for the Z.R § 73-623 special permit to modify the yard and setback regulations, such that the relief sought is the minimum variance necessary to meet its

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programmatic need to construct the proposed building. The applicant argues that the proposed building must contain 103 units to be financially viable, and because it is a 100% low-income residence, it requires both capital and operational subsidies, which are provided on a per-unit basis. The applicant claims that the project is only feasible with appropriate economies of scale, both for the construction and operation of the proposed building. The applicant declares that the number of units proposed are critical to secure funding that would cover standard costs for items like the foundation, roof, HVAC system, conveyance systems, as well as transaction costs. 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.

Z.R. § 73-623 authorizes the Board to modify underlying bulk regulations, other than floor area ratio, for developments or enlargements of Quality Housing buildings in which at least 50% of the dwelling units are income-restricted housing units.

A.

The applicant submits that there are physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or topographical features that create practical difficulties in complying with the bulk regulations for Quality Housing buildings and would adversely affect the building configuration or site plan. The applicant claims that the subject Premises are extremely shallow relative to its length, with a depth of approximately 52'-0" at its southern boundary and 43'-0" at its northern boundary, with a length of over 200 feet. In support of this contention, the applicant submitted as-of-right plans which demonstrate that a complying Quality Housing building on such a shallow site would result in an inefficient single-loaded corridor building. The applicant argues that this inefficiency increases the construction costs per unit in the proposed building and requires a taller building with additional stories in order to construct a sufficient number of units to make the proposed building financially viable. Accordingly, the Board finds that there are unique physical conditions at the subject Premises that create practical difficulties in complying with the bulk regulations and would adversely affect the building configuration or site plan.

B.

The applicant submits that the practical difficulties of developing on the zoning lot have not been created by the owner or by a predecessor in title. In support of this contention, the applicant submitted a Sanborn map showing that the shallow lot condition has existed since at least 1887. The applicant further explains that the current residence was developed with small units that are not suitable for both the Family Reunification Program, which focuses on family reunification and demands multiple bedroom units that can accommodate families, as well as for modern affordable housing units that meet HPD's requirements. Additionally, the applicant reiterates, from its Z.R. § 72-21 (d) findings,

that the challenges that it faces at the subject Premises are the result of its efforts to develop housing that would remain 100% affordable to low-income residents for the life of the development. 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.

C.

The applicant submits that the proposed modifications would not unduly obstruct access of light and air to adjoining properties or streets. In support of this contention, the applicant submitted a shadow study which concluded that the proposed building would not result in a significant adverse impact from the generated incremental shadows from the proposed building on potentially sunlight-sensitive resources. The applicant submitted illustrations which details how the incremental shadows cast on the amenities of the open space resource would not substantially affect public usability and enjoyment of the playground or affect vegetation. Furthermore, the study shows that the usability of the active recreational amenities, such as handball and basketball courts and playground equipment, would not be substantially diminished by the addition of the incremental shadows since the duration of the incremental shadows is short at any given time as the shadows sweep eastward. Similarly, the study displays that the incremental shadow would be cast on passive use amenities, such as benches, for a relatively short period of time, while additional benches in the playground area with sunlight would continue to be available for use. Meanwhile, the study demonstrates that although portions of adjacent houses of worship would be cast in incremental shadows, the design elements of the buildings are not sunlight-sensitive such as stained-glass windows or elaborate, highly carved ornamentation. Accordingly, the Board finds that the proposed special permit would not unduly obstruct access of light and air to adjoining properties or streets.

D.

The applicant submits that the proposed scale and placement of the development relates harmoniously with the surrounding area. Specifically, the applicant states that the proposed building has been designed to fit in with the surrounding neighborhood and would be constructed with materials typical of both the neighborhood's historic and contemporary buildings. In support of this contention, the applicant submitted a Neighborhood Character Study, which demonstrates that the proposed building would be constructed to 12 stories and is on a scale consistent with the taller residential and institutional buildings in the surrounding area, including the adjacent residential tower. The applicant further contends that the varied massing of the proposed building and its street wall articulation would ensure that the pedestrian experience is minimally impacted by the development. Accordingly, the Board finds that the proposed scale and placement of the development relates harmoniously with the surrounding area.

E.

The applicant submits that the requested modification is the least amount necessary to relieve such practical

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difficulties and are the minimum necessary to complete the proposed building. The applicant argues, as it did with its Z.R. § 72-21 (e) argument, that the proposed building must contain 103 units to be financially viable, and because it is a 100% low-income residence, it requires both capital and operational subsidies, which are provided on a per-unit basis. The applicant claims that the project is only feasible with appropriate economies of scale, both for the construction and operation of the proposed building. The applicant declares that the number of units proposed are critical to secure funding that would cover standard costs for items like the foundation, roof, HVAC system, conveyance systems, as well as transaction costs. Accordingly, the Board finds that the proposed special permit is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

V.

Over the course of hearings, the Board raised additional concerns about the proposed financing, specifically regarding the applicant's revised Empire State Supportive Housing Initiative ("ESSHI") submission, changes in the applicant's hard costs, financing terms and underwriting standards and its effect on the timeline to complete construction; the applicant's design choices particularly as it relates to urbanism factors and neighborhood character, including improving the massing of the building, the street wall divisions, and the relationship of the height of the building to the street; and the long-term use of the residence as low-income housing, as per Z.R. § 73-623 requirements.

In response to the concerns about the funding for the proposed building, the applicant submitted a revised request for proposal discussing the imposition of the 60% AMI cap. Furthermore, in response to the changes in the projected hard cost for the proposed building, the applicant stated that he original projected hard costs were speculative and based on standard unit costs. The applicant explained that subsequently it consulted with a reputable affordable housing general contractor about the costs associated with the construction method and materials anticipated for the Proposed Project. The applicant states that the revised cost estimate is not only specific to the proposed building but also incorporated current increases in costs related to supply chain issues and material shortages caused by the global COVID-19 pandemic, which have significantly increased construction costs.

Furthermore, in response to the Board's concerns about the flexibility of the developer fee and the Debt Service Coverage Ratio ("DSCR") for the project, the applicant responded that (1) the developer fee is a backstop in case the project has cost overruns beyond the project budget and without that fee, the applicant could find itself in the precarious position of needing additional funding to complete the project; and (2) lenders are inflexible with respect to DSCR as it protects both the lender and the project owner in the case that rent collection is lower than expected and/or expenses are higher than projected as this ratio helps to ensure that the project will have enough

income to cover the mortgage. Additionally, the applicant submitted a timeline which indicated that the applicant would apply for financing via New York City Housing Perseveration Department's ("HPD") next nine percent Low Income Housing Tax Credit (LIHTC) funding round in Spring/Summer 2022. The applicant represents that it plans to continue design development in the Spring of 2022 in advance of the application to HPD for funding.

In addition, the applicant submitted revised plans in response to the Board's design concerns, illustrating the proposed increase to the height of the parapet wall around the mechanical bulkhead of the roof of the building at its southernmost (corner) massing, increasing the height of that portion of the building from 119'-0" to 130'-4". The applicant represents that this extension of the parapet wall and the horizontal grouping of the windows of this "slab" of the building is intended to clearly distinguish the corner portion of the building as the tallest of the three stepped masses and highlight the building's downward step northward along Emerson Place. Additionally, the applicant contends that the parapet has been articulated to complete the top of the "slab" with a colonnade-like feature by grouping the 10th floor windows with the openings at the mechanical level. Also, the applicant states that the corner metal panel and window assemblies of floors two through eleven at the two northern "slab" masses of the building have been altered to wrap around the corner of each "slab." Additionally, the applicant declares that the plans demonstrate that the window groupings have been introduced at the ninth floor of the northernmost setback "slab" and at the 11th floor of the center "slab." The applicant concludes that these groupings highlight the top of each separate massing with a special termination.

Moreover, to commit to these safeguards and obligations, the applicant recorded a restrictive declaration on February 11, 2022, under CRFN # 2022000066559 committing to the following:

1. All affordable units in the proposed development would be low-income affordable housing units;
2. All affordable units in the proposed developments would be provided to tenants whose annual income is at or below 60% of AMI;
3. All affordable units in the proposed development would remain as affordable housing units rented to tenants whose annual income is at or below 60% AMI as long as the proposed development stands;
4. The Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the Declarant and its heirs, legal representative, successors and assigns;
6. Failure to comply with the terms of this Declaration, which remain uncured within 30

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days of Declarant's receipt of written notice to comply may result in 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

7. In the event that the Proposed Development is not constructed, this Declaration may be terminated by Notice of Cancellation approved with prior written consent of the Board to be recorded at the City Register's Office against the Premises, and upon filing of such Notice of Cancellation and submitting proof of recording to the Board, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

VI.

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. 21BSA022K, dated January 24, 2022. 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 letter dated December 17, 2021, the New York City Department of Environmental Protection ("DEP"), Bureau of Planning and Analysis states that it has reviewed the Noise Chapter of the March 12, 2021, EAS and support materials. DEP that based on the results of the Noise analysis performed as per the CEQR Technical Manual, it was determined that the proposed project would not result in significant adverse impact for noise. The assessment included noise from mobile and stationary sources.

By letter dated January 5, 2022, DEP Bureau of Sustainability states that it has reviewed the December 2021 Remedial Action Plan ("RAP") and the December 2021 Construction Health and Safety Plan ("CHASP"). The December 2021 RAP proposes proper handling, transportation and disposal of excavated materials from the site in accordance with applicable laws and regulations; dust control procedures; air monitoring procedures; stockpiling of excavated soils on, at minimum of 20-mil polyethylene sheeting and covered with a minimum 10-mil polyethylene sheeting; implementation of storm-water pollution prevention measures; all found underground storage tanks would be properly removed and closed in accordance with applicable federal, state and local regulations; dewatering, if necessary, conducted in accordance with applicable permits; the installation of a 20mil, Stego Wrap or equivalent, vapor barrier/waterproofing system beneath the building slab and

outside of subgrade foundation sidewalls (before a different vapor barrier system is installed during the project, a RAP amendment would be submitted to DEP for review); the installation of an engineered composite cover consisting of an eight-inch-thick concrete layer for the cellar slab and subgrade walls and a 10-inch structural concrete layer below the detention tank; as well as the installation of two feet of DEP approved clean soil in the landscaped/grass-covered side yard. The December 2021 CHASP addresses worker and community health and safety during redevelopment.

Based upon our review of the submitted documentation, DEP has the following comments and recommendations to BSA:

CHASP

- BSA should instruct the applicant to include the names and phone numbers for the Site Health and Safety Officer and an alternate Site Health and Safety Officer in the CHASP prior to the start of any construction activities.
- BSA should instruct the applicant that at minimum, all associated information fact sheets or safety data sheets for potential chemicals of concern that are identified and have not been included in the Safety Data Sheets section should be included (e.g., volatile organic compounds, etc.).

DEP finds the December 2021 RAP and CHASP, which addresses worker and community health and safety during construction acceptable, as long as the aforementioned information is incorporated into the 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., proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with applicable local, state, and federal regulations; proof of installation of engineering control system; 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.).

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 73-623 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 and 73-623 to *permit* the development of income-restricted supportive and affordable housing that does not comply with the zoning requirements for floor area (Z.R. § 23-153), density (Z.R. § 23-22), height and setback (Z.R. § 23-622), rear yard (Z.R. § 23-471 and 23-52); *on condition* that all work and site conditions shall conform to drawings filed with this

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application marked "Received January 21, 2022" — Ten (10) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum total building height of 130'-4" (12 stories); a maximum floor area of 80,467 square feet (7.99 FAR); 103 dwelling units; a maximum of 0'-0" setback; a rear yard measuring 0'-0" at the first floor and above; and a maximum interior lot coverage of 100%;

THAT all affordable units in the proposed development shall be low-income affordable housing units;

THAT all affordable units in the proposed developments shall be provided to tenants whose annual income is at or below 60% of AMI;

THAT all affordable units in the proposed development would remain as affordable housing units rented to tenants whose annual income is at or below 60% AMI as long as the proposed development stands;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-84-BZ"), shall be obtained within four years, by January 24, 2026;

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 24, 2022.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for adjourned hearing.

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

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

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 28 & March 1, 2022, at 10 A.M., for decision, hearing closed.

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

ACTION OF THE BOARD – Laid over TBD, at 10 A.M., for adjourned hearing.

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – 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.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

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COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for adjourned hearing.

PUBLIC HEARINGS

MONDAY-TUESDAY, JANUARY 24-25, 2022
2:00 P.M.

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

2021-52-BZ

APPLICANT – Terminus Group, LLC, for Frank Martarella III, owner.

SUBJECT – Application August 10, 2021 – Variance (§72-21) to permit the construction of a single-family detached home contrary to side yard regulations. R3-1 zoning district.

PREMISES AFFECTED – 134-24 159th Street, Block 12297, Lot 19, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

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CORRECTION: This resolution adopted on May 18, 2020, under Calendar No. 2017-265-BZ, is hereby corrected to read as follows:

2017-265-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application September 8, 2017 – Reinstatement (§11-411) of a previously approved variance which permitted the storage, warehousing, office and showroom (UG 16B) and the assembly of venetian blinds (UG 17) which expired on June 24, 1991; Waiver of the Board’s rules. R6B zoning district.

PREMISES AFFECTED – 318-320 54th Street (aka 5401 3rd Avenue), Block 822, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – 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 a special permit, pursuant to Z.R. §§ 73-53 and 73-03, to legalize the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds.

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, with 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

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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 berths. 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 Z.R. § 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. §§ 73-53 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, *permit* pursuant to Z.R. § 11-411, in an R6B zoning district, the reinstatement of the variance previously granted under BSA Cal. No. 539-56-BZ as amended by BSA Cal. No. 226-81-BZ, 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 one-story, with mezzanine, building used for storage, warehouse, and assembly of venetian blinds, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received May 6, 2020”—Eleven (11) sheets; and *on further condition*:

THAT the term of the variance 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.

***The resolution has been amended. Corrected in Bulletin Nos. 5-6, Vol. 107, dated February 4, 2022.**

CORRECTION: This resolution adopted on May 18, 2020, under Calendar No. 2020-2BZ, is hereby corrected to read as follows:

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 54th Street (aka 5401 3rd 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 a special permit, pursuant to Z.R. §§ 73-53 and 73-03, to legalize the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds.

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, with 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,

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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 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

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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. §§ 73-53 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, *permit* pursuant to Z.R. § 11-411, in an

R6B zoning district, the reinstatement of the variance previously granted under BSA Cal. No. 539-56-BZ as amended by BSA Cal. No. 226-81-BZ, 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 one-story, with mezzanine, building used for storage, warehouse, and assembly of venetian blinds, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received May 6, 2020”—Eleven (11) sheets; and *on further condition*:

THAT the term of the variance 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.

***The resolution has been amended. Corrected in Bulletin Nos. 5-6, Vol. 107, dated February 4, 2022.**

BULLETIN

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February 18, 2022

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New Case Filed Up to February 7-8, 2022

2022-10-BZ

55 Prospect Street, Block 0063, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**.
Special Permit (§73-19) to permit the operation of a daycare center (UG3) (Vivvi) contrary
to ZR §42-10. M1-6 zoning district. M1-6 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY & TUESDAY, MARCH 14-15, 2022
10 A.M. and 2 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, March 14th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday March 15th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Roman Midyany, owner.
SUBJECT – Application January 5, 2022 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-622) to permit the enlargement of an existing single family which expired December 12, 202. R3-1 zoning district.
PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.
COMMUNITY BOARD #15BK

2016-1219-BZ

APPLICANT – Sheldon Lobel, P.C., for 74th and Myrtle LLC, owner.
SUBJECT – Application November 15, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a two-story mixed-use commercial and residential building which expired on November 17, 2021. R4-1 zoning districts.
PREMISES AFFECTED – 73-45 Myrtle Avenue, Block 3823, Lot 88, Borough of Queens.
COMMUNITY BOARD #3Q

ZONING CALENDAR

2021-51-BZ

APPLICANT – Akerman LLP, for 37 Ave Richouse LLC, owner.
SUBJECT – Application August 10, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21.C4-2 zoning district.
PREMISES AFFECTED – 133-25 37th Avenue, Block 4970, Lot (s) 11, 18, Borough of Queens.
COMMUNITY BOARD #7Q

2021-56-BZ

APPLICANT – Sheldon Lobel, P.C., for 341-353 39th Street LLC, owner.
SUBJECT – Application August 24, 2021 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Prospect Charter School) contrary to ZR §42-00. M1-2 zoning district.
PREMISES AFFECTED – 341 39th Street, Block 704, Lot 54, Borough of Brooklyn.
COMMUNITY BOARD #3BK

Margery Perlmutter, Chair/Commissioner

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PUBLIC HEARINGS
MONDAY-TUESDAY, FEBRUARY 7-8, 2022
10:00 A.M.

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

SPECIAL ORDER CALENDAR

221-88-BZII

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Long Island Jewish Medical Center, owner.

SUBJECT – Application February 25, 2021– Amendment to the Board’s condition of term of a previously approved Special Permit (73-49) which permitted open parking on the roof of an accessory parking garage which expired on December 6, 2013. R7-1 zoning district.

PREMISES AFFECTED – 102-01 60th Road, Block 2131, Lot 16, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an amendment to permit an extension of term of a previously granted special permit, under Z.R. § 73-49, which permitted open parking on the roof of the Premises, and expired on December 6, 2013, and an increase in the number of vehicles permitted to park on the roof.

A public hearing was held on this application on November 15, 2021, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2022, and then to decision on February 7, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 6, Queens, recommends approval of this application.

The Premises are bounded by 66th Avenue to the north, 103rd Street to the east, 66th Road to the south, and 102nd Street to the west, within an R7-1 zoning district, in Queens. With approximately 219 feet of frontage along 66th Avenue, 283 feet of frontage along 103rd Street, 200 feet of frontage along 66th Road, 271 feet of frontage along 102nd Street, and 57,993 square feet of lot area, the Premises are occupied by a hospital building, ranging in height from one-to ten-stories, and four-story open roof parking garage with a footprint of approximately 13,000 square feet..

The Board has exercised jurisdiction over the Premises since December 6, 1988, when, under the subject calendar number, the Board granted a special permit, under Z.R. §

73-49, to permit open parking on the roof of an accessory parking garage for a proprietary hospital on condition that all work substantially conform to plans filed with the application; the special permit be limited to a term of five years; 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 in accordance with Z.R. § 73-30.

On December 14, 1993, under the subject calendar number, the Board amended the resolution to extend the term for ten years, to expire on December 6, 2003, on condition that the screening at the roof level be installed and adequately maintained and the Premises be in substantial compliance with the existing and proposed conditions plans, submitted with the application; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by December 14, 1994.

On May 13, 1997, under BSA Cal. No. 205-96-BZ, the Board granted a variance, under Z.R. § 72-21, to permit the proposed two-story addition to an existing hospital building (Use Group 4), and the legalization of certain non-compliances which create non-compliances with regard to lot coverage, contrary to Z.R. § 24-11, on condition that all work substantially conform to plans as they apply to the objection, filed with the application; 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 December 8, 1998, under BSA Cal. No. 205-96-BZ, the Board further amended the resolution to permit an enlargement to the sixth floor of the medical facility building, of approximately 1,512 square feet, on condition that the Premises comply with the plans submitted with the application, and other than as amended the resolution be complied with in all respects.

On October 19, 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 special permit, to expire on December 6, 2013, on condition that all work substantially conform to plans 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 appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the Department of

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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 more than two years and less 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)(3)(ii), of the Board's Rules to permit the filing of this application.

The applicant represents that open rooftop parking use at the Premises continues to meet the findings of Z.R. § 73-49. Specifically, the applicant states that use continues to be consistent with the character of the area, and the parking garage has been used continuously since the expiration of the term in 2013.

At hearing, the Board acknowledges, and the applicant confirms, that, to meet the hospital parking demand on site, the open rooftop parking supply may accommodate no more than 61 parking spaces, provided that the structural safety of the rooftop, and the entire building, shall be ensured while subject to all possible loads including those from the proposed parking and such determination shall be conducted by a New York State-licensed Professional Engineer in accordance with the latest applicable building codes and/or design provisions.

Based upon its review of the record, the Board has determined that the requested amendment to the special permit, to remove the term and reflect an increase the number of open rooftop parking spaces, 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 December 6, 1988, as amended through October 19, 2004, so that as amended this portion of the resolution shall read: "to permit an increase in the number of parking spaces on the open rooftop parking garage, to 61 spaces, with no term; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Approved February 7, 2022"—Five (5) sheets; and *on further condition*:

THAT the hours of operation for the rooftop parking area shall be limited to 6:00 a.m. to 10:00 p.m.;

THAT rooftop lights shall be turned off daily by 10:00 p.m. or at the closing of the rooftop parking area, whichever shall occur earlier;

THAT the rooftop parking area shall be attendant parking only;

THAT the structural safety of the rooftop, and the entire building, shall be ensured while subject to all possible loads including those from the proposed parking and such determination shall be conducted by a New York State-licensed Professional Engineer in accordance with the latest applicable building codes and/or design provisions;

THAT parking stackers are not permitted, except as

where shown on BSA-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 221-88-BZ"), shall be obtained within one year, by February 7, 2023;

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

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

THAT the Department of Buildings must 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 7, 2022.

CORRECTION: This resolution adopted on February 7, 2022, under Calendar No. 90-91-BZ, is hereby corrected to read as follows:

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 – 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 6, 2018, acting on Application Type Alteration 1 No. 220635640, reads in pertinent part: "BSA approval #90-91-BZ has expired. File request for BSA extension. Proposed plans are contrary to the plans approved under 90-

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91-BZ and require BSA approval.”

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”); an extension of term for a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the enlargement of a legal non-conforming use with parking located within a two-story, mixed-used commercial and residential building contrary to district use regulations and expired on June 21, 2014; and an amendment to the interior layout and sizes of the commercial units and a modification in the number of accessory parking spaces.

A public hearing was held on this application on July 16, 2019, after due notice by publication in *The City Record*, with continued hearings on September 17, 2019, October 3, 2019, September 14, 2020, November 30, 2020, May 24, 2021, and October 18, 2021, and then to decision on February 7, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 10, Bronx, recommends approval of this application.

The Premises are located on the east side of City Island Avenue, between Sutherland Street and Cross Street, within an R3A zoning district and the Special City Island District, in the Bronx. With approximately 110 feet of frontage along City Island District, 159 feet of depth, and 17,400 square feet of lot area, the Premises are occupied by an existing two-story, mixed-used commercial and residential building.

The Board has exercised jurisdiction over the Premises since June 28, 1994, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 zoning district, the enlargement to existing legal nonconforming commercial uses (Use Group (“UG”) 6) with accessory parking, located in a two-story mixed use building containing commercial and residential uses (UG 2 and UG 6), and conforming, two-story, two-family residences also in the rear of the lot, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; landscaping and street trees be installed and maintained in accordance with BSA-approved plans; opaque fencing be installed and maintained in accordance with BSA-approved plans; the parking area be attended during peak hours and holidays and kept locked after hours; all signs comply with C-1 district regulations; the restaurant close at 11:00 p.m. weekdays and Sundays and at midnight on Fridays and Saturdays; the term of the variance be limited to 20 years, to expire on June 21, 2014; the above conditions appear on the certificate of occupancy; in accordance with a Conditional Negative Declaration issued on May 18, 1993, the applicant has agreed to the following:

The applicant shall submit the following mitigation measures to the New York City Department of Transportation, Division of Signals and Street Lighting for approval;

1. A shift of 3.0 seconds of green time from Cross Street (NS) to City Island Avenue

(EW);

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 Z.R. §72-23.

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 § 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 the variance to modify the layout of the eating and drinking establishment and the adjacent retail store and to reduce the previously approved parking. The applicant proposes to remove a rear storage area (168 square feet) from the eating and drinking establishment and add it to the retail store. The applicant represents that the ground floor as proposed has an approximately 2,168-square foot eating and drinking establishment, an approximately 1,975-square foot retail store, an approximately 1,743-square foot retail store, and an approximately 1,495-square foot retail store. The proposed hours of operation of the commercial spaces are as follows: Eating and drinking establishment: Monday-Wednesday, 5:00 a.m.-10:00 p.m., Thursday-Sunday, 5:00 a.m.-11:00 p.m.; Retail: Monday-Saturday, 8:00 a.m.-7:00 p.m., Sunday, closed; Retail: Monday-Friday, 6:00 a.m.-9:00 p.m., Saturday, 5:00 a.m. - 9:00 p.m., Sunday, 5:00 a.m. - 7:00 p.m. The applicant also proposes to divide the existing residential dwelling unit located on the second floor into two dwelling units.

Additionally, the applicant proposes to decrease the number of accessory parking spaces at the Premises to a total of 18 parking spaces in the rear of the Premises (17 spaces for the commercial uses and 1 space for the residential use). The applicant states that, as per Z.R. § 112-111, accessory parking for any commercial uses or mixed-use development, one off-street accessory space per 300 square feet of commercial floor area is required, except for eating and drinking establishments; which yields in a requirement of 17 spaces for this development. As per Z.R. § 112-112, with the proposed decrease in the size of the eating and drinking establishment the required parking is waived as less than 15 spaces are required (2,168 square feet/ 150 square feet = 14 spaces), and for the remainder of the retail spaces a total of 17 spaces are required (5,213 square feet/300 square feet = 17 spaces). Furthermore, the applicant represents that one parking space is required for the new residential dwelling unit on the second floor.

Over the course of hearings, the Board expressed concerns about the applicant’s failure to comply with the terms of the prior grant, specifically the required landscaping at the site and the general maintenance of the site as evidenced by the state of the fencing, trash enclosure, and curbing. With regard to the landscaping at the site, the

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Board stated that because the planting bed from the previous BSA approval, which required four-foot-deep planting beds planted with shrubs at least eight feet high at time of planting, was never planted, the applicant was not in compliance with the terms of the grant. The Board stressed that this dense landscaping buffer is necessary for a commercial use in a residence district, especially one, such as the subject Premises, that abuts against residences so as to shield the neighbors from the commercial activity at the site. Moreover, the Board added that this approved planting bed and detail must be vertically and horizontally deep enough to support the requested arborvitae. The Board also directed the applicant to install proper curbing around the planting bed to protect the planting from vehicles at the site and submit the details of the planting bed.

As to the general conditions at the site, the Board member's site visits confirmed that the site was poorly maintained with trash strewn everywhere, trucks parked on site contrary to the terms of the BSA grant, a misshapen trash enclosure, and a bent chain link fence. The Board directed the applicant to clean up the site and install a fence with residential grade metal picket fencing and trash enclosure with a cement masonry or concrete block with a solid steel door. In addition, the Board requested an up-to-date site plan and a lumens spread diagram from the field demonstrating a reading of 0.0 at the residential lot line. Furthermore, over the course of the many hearings on this application, the Board found that the applicant had failed to comply with or respond to its repeated directions in a timely manner and provide proof of compliance. As such, the Board requested a reason for the continued delay and a timeline for when compliance could be expected.

Eventually, the applicant testified in front of the Board and stated that the absence of a certificate of occupancy had hurt its ability to rent the spaces, thereby causing its delays in compliance. After this testimony, the applicant gradually began to make improvements to the site. Additionally, the applicant submitted photographs documenting significant improvements at the site, such as proper curbing at the planting areas, wheel stops, tall arborvitae, trees, and shrubs, installed around most of the perimeter, and a newly improved trash enclosure made of chain link fence with slats. The Board noted that trash enclosure materials should consist of a more rigid material such as masonry walls and steel doors as to create a permanent solution to the issues at the site. In addition, the applicant submitted an updated site plan and lumens spread diagram documenting light spread measuring 0.0 at the residential lot line. The Board did note that the applicant's photographs showed that the dumpster was not kept inside of the trash enclosure with the doors closed. Furthermore, due to length of time that it took the applicant to comply with the Board's directions, the Board stated that its Compliance Officer would visit the site within 18 months from the date of this approval and notify the owner if the site is not being maintained. The Board stated that a compliance hearing may be necessary if the site is found to not be in compliance with the terms of the BSA grant unless, within a reasonable timeframe, photographs

are submitted to the Board depicting that the issue had been addressed.

Based upon its review of the record, the Board has determined that the extension of term of the variance and proposed amendments to the modification of the layout of the eating and drinking establishment, the adjacent retail store, and parking at the Premises, 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 June 28, 1994, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years, to expire on February 7, 2042, to permit the modification of the layout of the eating and drinking establishment, the adjacent retail stores, and parking at the Premises; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received January 19, 2022 – Thirteen (13) sheets'; and *on further condition*:

THAT the term of the variance will be for 20 years, to expire on February 7, 2042;

THAT all landscaping, curbing, asphalt, striping, fencing shall be maintained in good condition as per the BSA-approved plans and shall be repaired or replaced as needed;

THAT all signs shall comply with C-1 district regulations;

THAT parking shall not exceed the number shown on the BSA-approved plans;

THAT there shall be no truck storage on site;

THAT the lumens spread must be zero (0.0) at the residential property line;

THAT the dumpster shall be kept inside the dumpster enclosure with the doors closed at all times when the trash is not being collected;

THAT the Board's Compliance Officer shall visit the site in 18 months from the date of approval, by August 7, 2023, to ensure compliance with the terms of the grant. If during this visit, the Compliance Officer finds that the site is not being maintained in accordance with the terms of this grant, the owner shall be notified that a compliance hearing may be necessary unless within a reasonable time frame, it can submit photographs demonstrating that the documented issue(s) have been addressed;

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. 90-91-BZ'), shall be obtained within two years, by February 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

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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, February 7, 2022.

307-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Amerasia Bank, owner.

SUBJECT – Application May 12, 2021 – Extension of Term of a previously approved Variance (§72-21) to permit the operation of non-commercial art gallery, community facility space and office use (UG 6) on floors two through five within a 5 story mixed-use building contrary to underlying use regulation which expires on July 10, 2021. C1-2/R6 zoning district.

PREMISES AFFECTED – 41-02 Main Street, Block 5041, Lot 30, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of term for a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the operation of Use Group (“UG”) 6 retail on floor one, UG 3 community facility on floor two, currently operating as a non-commercial art gallery, and UG 6B office use on floors three through five within a five-story, mixed-use commercial and community facility building, which expired on July 10, 2021; and an amendment to remove the 20-year renewal requirement from the previous grant.

A public hearing was held on this application on December 13, 2021, after due notice by publication in *The City Record*, and then to decision on February 7, 2022. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 7, Queens, recommends approval of this application on condition that 20-year term remain intact.

The Premises are located on the southwest corner of Main Street and 41st Avenue, within a C1-2 (R6) zoning district, in Queens. With approximately 20 feet of frontage along Main Street, 88 feet of frontage along 41st Avenue, and 1,719 square feet of lot area, the Premises are occupied by an existing five-story, mixed-use commercial and community facility (eating and drinking establishment, non-commercial art gallery, and office) building.

The Board has exercised jurisdiction over the Premises since July 10, 2001, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in a C1-2 (R6) zoning district, the proposed use of floors two through five of a five-story and

cellar, mixed-use building for non-commercial art gallery/community facility space and office use (Use Group 6), which does not comply with the zoning requirements for commercial use of upper floors, and is, therefore, contrary to Z.R. §§ 32-421, 32-121, and 36-21, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the term of the variance be limited to 20 years from the date of the grant, to expire on July 10, 2021; the second floor remain as a Use Group 6, non-commercial art gallery/community facility space; a smoke detection system and an interior Fire Alarm system be installed throughout the second, third, fourth, and fifth floors and both systems connected to a Fire Department approved central station; an automatic wet sprinkler system be installed throughout the entire cellar connected to a Fire Department approved central station; the 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 Code and any other relevant laws under the jurisdiction of the Departments; and substantial construction be completed in accordance with Z.R. § 72-23.

At hearing, the Board discussed the applicant’s request to remove the 20-year renewal requirement from the prior grant and found that because the subject Premises are adjacent to largely commercial uses, permitting the site to remain as commercial and community facility use without a term would not adversely the neighborhood context. Furthermore, the Board requested that the applicant submit proof that it had complied with the terms of the existing grant, specifically photographs demonstrating the required non-commercial art gallery/community facility use on the second floor.

In response, the applicant submitted interior compliance photographs demonstrating the second floor non-commercial art gallery, office use on floors three through five, and the installed fire alarm system and smoke detectors.

Based upon its review of the record, the Board has determined that the extension of term of the variance and amendment to remove the 20-year renewal request 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 July 10, 2001, so that as amended this portion of the resolution shall read: “to extend the term of the variance and to remove the 20-year renewal requirement; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Receive July 28, 2021 – Twelve (12) sheets’; and *on further condition*:

THAT the second floor shall remain as a UG 3, non-commercial art gallery/community facility space;

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. 307-00-BZ’), shall be obtained within two years, by February 7, 2024;

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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;

THAT the Department of Buildings must 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 7, 2022.

853-53-BZ

APPLICANT – Eric Palatnik, P.C., 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

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for continued hearing.

519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP for BP Products North America, Inc. owner.

SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board’s Rules of Practice and Procedures. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

132-58-BZ

APPLICANT – Nasir J. Khanzada, for Maria Barone, owner; Swaranjit Singh, lessee.

SUBJECT – Application July 6, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 20, 2020; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R3-2 zoning district. Community Board 7, Queens.

PREMISES AFFECTED – 17-45/17-55 Francis Lewis Boulevard, Block 4747, Lot(s) 31, 41, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

914-86-BZII

APPLICANT – Klein Slowik, PLLC, for Union Temple of Brooklyn, owner; Eastern Atlantic Inc., lessee.

SUBJECT – Application September 30, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 19, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on December 14, 2011; Amendments to the Board’s conditions on term, Amendment to enlarge the mezzanine; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to PCE, for adjourned hearing.

17-92-BZ

APPLICANT – Eric Palatnik, P.C., for E & O Realty, owner; Cugine Foods, LLC, lessee.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the operation of an eating and drinking establishment with accessory drive thru which expired on December 6, 2017; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 60-06/12 Northern Boulevard, Block 1183, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for adjourned hearing.

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58-99-BZ

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

SUBJECT – Application September 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy and Complete Construction of a previously approved variance permitting the operation an automotive service station (UG 16B) which expired on March 19, 2020. C1-2/R3-2 zoning district.

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

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for decision, hearing closed.

6-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over May 9-10, 2022, at 10 A.M., for continued hearing.

15-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for La Fayette Astor Associates, LLC., owner; TSI Astor Place, LLC dba New York Sports Club, lessee.

SUBJECT – Application July 13, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (New York Sports Club) which expired July 14, 2019; Amendment to request a change in the hours of operation; Waiver of the Board’s Rules of Practice and Procedures. M1-5B zoning district.

PREMISES AFFECTED – 8-10 Astor Place, Block 545, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to PCE, for adjourned hearing.

2-11-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.

SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

78-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, Ayer Re Development, LLC, owner,

SUBJECT – Application February 26, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a four-story mixed-use building which expired on March 10, 2019. C8-1 zoning district.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Block 7880, Lot 550, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for decision, hearing closed.

2017-243-BZ

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

SUBJECT – Application July 13, 2021 – Extension of Time to Obtain a CO of a previously approved variance permitting the operation of an automotive service station with accessory uses which expired on October 29, 2020; Waiver of the Board’s Rules of Practice and Procedures. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard - aka 29-29 172nd Street, Block 4938, Lot 1 Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for deferred decision.

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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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings, dated October 5, 2020, acting on Alteration Type 1 Application No. 421688748 reads in pertinent part:

1. Proposed building within bed of mapped street, contrary to GCL Section 35
2. Proposed building does not front on a mapped street, contrary to GCL 36

This is an application under General City Law (“GCL”) §§ 35 and 36 to permit, in an R1-2 zoning district, the enlargement of an existing two-story, with cellar, single-family residence located in the bed of a mapped street and not fronting on a mapped street.

A public hearing was held on this application on October 19, 2020, after due notice by publication in *The City Record*, with continued hearings on February 23, 2021, October 19, 2021, and January 11, 2022, and then to decision on February 7, 2022. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood.

The Premises are located on the east side of 40th Avenue, between 240th Street and 243rd Street, within an R1-2 zoning district, in Queens. With approximately 45 feet of frontage along Stuart Lane, 132 feet of depth, and 6,548 square feet of lot area, the Premises are currently occupied by a two-story, with attic, single-family residence.

II.

GCL §35, in relevant part, provides that the Board may approve permits for development within the bed of mapped streets, as follows:

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the City has not acquired title thereto, the City may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public

interest as a condition of granting such permit, which requirements shall inure to the benefit of the City.

GCL § 36 (2) states, in part:

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 a 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.

III.

The applicant proposes to add 793 square feet to the existing 2,162 square-foot, two-story, single-family residence. The applicant represents that this proposed enlargement would create a more efficient living space and improved layout within the existing residence. The applicant further states that as a majority of the site is located within the bed of 40th Avenue, there is no means to improve the existing residence without construction in the bed of 40th Avenue. The applicant asserts that the proposed enlargement would not create any adverse effects to the unimproved street.

As per the requirements under GCL § 35, the applicant represents that 40th Avenue has been shown on the official City Map for ten years or more, and the City has not acquired title, therefore, the Board may permit the proposed enlargement within the unimproved 40th Avenue. In support

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of this contention, the applicant cites the Board's decisions under BSA Cal. Nos. 2016-4260-A and 2016-4261-A, in which it granted the new construction within the bed of 40th Avenue, for the single-family residence located adjacent to the subject site.

Pursuant to the GCL § 36 requirements, the applicant represents that the existing residence was constructed in or about 1930, with its only access from Stuart Lane. The applicant further states that since such time, the City has not improved 40th Avenue and the only access to the site is still via Stuart Lane. The applicant concludes that improvements to the subject residence cannot be made without the Board's approval pursuant to GCL §36.

Over the course of hearings, the Board raised questions about the easement which grants the applicant access to Depew Avenue and responsibility for maintenance and repair of the street upon failure by the actual roadway owner.

In response to the Board's comments at hearings, the applicant submitted a revised site plan, indicating the metes and bounds description of the easement area and a restrictive declaration which binds the applicant and the future owners of the site to maintain and repair the easement area in case the owner fails to do so. Moreover, the applicant, to commit to these safeguards and obligations, the applicant recorded the restrictive declaration on March 23, 2022, under CRFN # 2022000122995, committing to the following:

Whereas, pursuant to that certain easement agreement, dated August 24, 1921, and recorded with the New York City Register under Liber 2364, Page 219, Declarant has the rights to utilize Stuart Lane for "all highway purposes" for access to Depew Avenue, an improved City of New York street....

Whereas, in connection with the BSA Application, Declarant has agreed to repair and maintain the Easement Area located immediately adjacent to the Site....

Whereas, the BSA requires the execution and recording of this Declaration in connection with such repair and maintenance of the Easement Area located immediately adjacent to the Site.

Now, therefore, in consideration by the BSA, the Declarant hereby declares as follows:

1. Failure to Maintain the Easement Area located immediately adjacent to the Site.
 - a. The Declarant hereby covenants and agrees for itself, its successors and assigns that if at any time, the Adjacent Easement Area is not maintained in accordance with New York City Department of Transportation rules and regulations ("Non-Conformance"), Declarant will send notice to the owner of Stuart Lane, by either (i) certified or registered mail, return receipt requested, postage prepaid, (ii) national overnight

delivery service, or (iii) personal delivery of such, detailing the Non-Conformance (the "Initial Notice").

- b. If the owner of Stuart Lane fails to commence remedy of the Non-Conformance within thirty (30) days of such Initial Notice, then Declarant will send a second notice (the "Second Notice") by service as described in Section 1(a) of this Declaration.
 - c. If the owner of Stuart Lane fails to commence remedy of the Non-Conformance within thirty (30) days of such Second Notice, then Declarant, within thirty (30) days, will take all necessary steps to maintain the Adjacent Easement Area in accordance with New City Department of Transportation rules and regulations.
2. This Declaration may not be modified, amended or terminated without the prior written consent of the BSA.
 3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the Declarant with their respective heirs, legal representatives, successor and assigns.
 4. Failure to comply with the terms of this Declaration may result in revocation of approvals by the BSA, which may result in the revocation of a certificate of occupancy.

IV.

By letter dated February 23, 2021, the New York City Department of Transportation ("DOT") states that it has reviewed the to the application and revised documents submitted to the BSA on September 9, 2020 and states that according to the Queens Borough President's Topographical Bureau, 40th Avenue between 240th Street and 243rd Street is mapped at 60 feet width, and the City does not have title. The improvement of 40th Avenue at this location, which would involve the taking of a portion of the applicant's property (Block 8103, lot 62, is not presently included in DOT's Capital Improvement Program, but this does not preclude a change in the program in the future). However, DOT requires the following:

- Please submit a survey of the subject site that is signed and stamped by a licensed surveyor and dated within the last ten years.

By letter dated December 9, 2021, the New York City Department of Environmental ("DEP") states that based on DEP maps, there are no existing sewers or water mains in the bed of 40th Avenue at the subject site. The revised site plan, dated December 6, 2021, shows the proposed enlargement of the existing single-family residence with the existing dry wells for discharge of stormwater and septic tank for sanitary discharge. Based on the above, and since there are no existing sewers and existing mains in bed of 40th Avenue, between 243rd Street and Depew Avenue, the

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NYC DEP has no objections to the proposed GCL 35 and GCL 36 application.

By letter dated February 4, 2021, the Fire Department states that the Fire Department, Bureau of Operations and Fire Prevention has reviewed the plans for the proposed enlargement which demonstrate that an automatic sprinkler system will be installed and monitored by a central monitoring system. The street, Stuart Lane, is currently not being maintained and the Fire Department requests that the portion of Stuart Lane fronting the Premises be resurfaced according to the Department of Transportation Standards. In addition, "No Standing" signs be installed in front of the Premises. The Fire Department has contacted the Queens Borough Office of the Department of Transportation to inspect and enforce DOT rules and regulations for the remaining portion of Stuart Lane and that property owners need to repair the street immediately. "No Standing" signs have also been requested for the Department of Transportation to install along Stuart Lane. Based upon 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.

Accordingly, 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 October 5, 2020, acting on Alteration Type 1 Application No. 421688748, under the powers vested in the Board by Sections 35 and 36 of the General City Law, to *permit* the enlargement of a building that does not front on a mapped street and located within the bed of a mapped street *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received September 29, 2021"- One (1) sheet; and *on further condition*:

THAT "No Standing" signs shall be installed in front of the site as per the BSA-approved plans;

THAT in the case that the Adjacent Easement Area is not maintained in accordance with New York City Department of Transportation rules and regulations, the owner of the subject property shall send notice to the owner of Stuart Lane, by either (i) certified or registered mail, return receipt requested, postage prepaid, (ii) national overnight delivery service, or (iii) personal delivery of such, detailing the Non-Conformance (the "Initial Notice");

THAT if the owner of Stuart Lane fails to commence remedy of the Non-Conformance within 30 days of such Initial Notice, then the owner of the subject property shall send a second notice (the "Second Notice") by service by either (i) certified or registered mail, return receipt requested, postage prepaid, (ii) national overnight delivery service, or (iii) personal delivery;

THAT if the owner of Stuart Lane fails to commence remedy of the Non-Conformance within 30 days of such Second Notice, the owner of the subject property, within 30

days, shall take all necessary steps to maintain the Adjacent Easement Area in accordance with New City Department of Transportation rules and regulations;

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

That a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2019-276-A"), shall be obtained within four years, by February 7, 2026;

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, February 7, 2022.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for decision, hearing closed.

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ZONING CALENDAR

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

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 7, 2019, acting on Application Type Alteration 1 No. 321939694, reads in pertinent part: “Proposed Use Group #2 residential use in C8-2 district does not conform to the use regulations of section 32-10 et. seq of the Zoning Resolution and must be referred to the Board of Standards and Appeals.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, in a C8-2 zoning district, the construction of a six-story, mixed-use commercial and residential building with conforming commercial use on the ground floor and residential uses on the upper floors, contrary to Z.R. § 32-10 and to the zoning requirements for FAR (Z.R. § 33-123).

A public hearing was held on this application on January 12, 2021 after due notice by publication in *The City Record*, and then to decision on February 7, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 1, Brooklyn, recommends denial of this application unless the applicant meet the following conditions: to provide three affordable apartments, two one-bedrooms and one two-bedroom, up to 60% Average Median Income (“AMI”); and the applicant conduct a full archeological study with a qualified archeologist. The Board received two form letters of support and three letters of objection, citing concerns over decreased quality of life from overcrowding, loss of sunlight and air, increased traffic, and noise from construction.

The Premises are located at the northeast intersection of Maspeth Avenue and Bushwick Avenue and are a triangular, full block site bounded by Maspeth Avenue to the south, Conselyea Street to the north and east, and Woodpoint Road to the west, within a C8-2 zoning district, in Brooklyn. With approximately 131 feet of frontage along

Maspeth Avenue, 56 feet of frontage along Woodpoint Road, 109 feet of frontage along Conselyea Street, and 2,967 square feet of lot area, the Premises are occupied by an existing parking lot.

The applicant proposed to construct a six-story, mixed-use commercial and residential building that would consists of (i) a commercial space occupying the ground floor, with a total commercial floor area of 2,468 square feet; and (ii) residential units occupying the second through sixth floors, with a total residential floor area of 14,916 square feet with a total FAR of 5.86. The applicant represents that the building’s cellar level would be used for bicycle storage, accessory residential storage, space for building mechanicals, and storage for the building’s ground floor commercial tenant; the ground floor would include a residential lobby with frontage on Conselyea Street and a commercial unit that would wrap around the lobby. The applicant states that because the residential lobby extends from Conselyea Street to Maspeth Avenue, the commercial unit would consist of three sections: the first section, to be located on the left side of the residential lobby, would be an irregularly shaped retail area with an entrance on Woodpoint Road; the second section, to be located to the right of the lobby, would be a triangular shaped retail space with an entrance on Maspeth Avenue; and the third section would be a narrow walkway that connects the first and second sections. The applicant further states that the proposed building on floors two through six would have a total of 15 residential apartments, with three apartments on each floor. The applicant describes that each floor would have a 920 square foot triangular two-bedroom apartment to the right of the building core and two one-bedroom apartments to the left of the building core. The applicant further represents that the smaller, one-bedroom apartments would have an area of 515 square feet, and the larger, one-bedroom apartments would have an area of 823 square feet. Finally, the applicant declares that the roof of the proposed building would have recreation space for the building’s residential tenants.

By letter dated December 29, 2020, the Fire Department states that it objects to the application in that the rooftop access has not been provided. As per Section 504.4.1 of the 2014 Fire Code, “Access to building rooftops shall be provided for fire operations by providing unobstructed access to the rooftop, including unobstructed passage across the building parapet, perimeter fence, or other obstructions, and a safe landing...” Based upon the foregoing, the Fire Department requests that the Board of Standards and Appeals not accept this application as filed. Plans shall be revised to show compliance with Section 504.4.1 for Fire Department Rooftop Access.

By correspondence dated October 1, 2018, the New York City Landmarks Preservation Committee (“LPC”) states LPC review of archeological sensitivity models and historic maps indicates that there is potential for the recovery of remains from Colonial or 19th Century occupation on the project sites. The project site’s location is adjacent to Bushwick Reformed Dutch Church Cemetery.

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Accordingly, the Commission recommends that an archaeological documentary study be performed for this site to clarify these initial findings and provide the threshold for the next level of review if such review is necessary (see CEQR Technical Manual 2014).

At hearing, the Board expressed concerns regarding the extent of the applicant's requested waiver and noted that the applicant had not requested the minimum variance, as per Z.R. § 72-21 (e), and used inflated construction and capitalized costs that were not supported by evidence or breakdowns to bolster its hardship argument, as per Z.R. 72-21 (a). The Board also observed that the application lacked several necessary aspects to meet its Z.R. § 72-21 (c) findings. The Board stated that the application as submitted did not provide enough information so that it could assess the impact of the building on the neighbors, such as contextual drawings with renderings of the building in place; a depiction of the minimum request alternative as an as-of-right use with only a parking waiver; the parking calculations for the as-of-right uses; the site's proximity to public transit; car ownership in this census tract; and an analysis of the potential impacts on the surrounding area if no parking is provided for the units.

Moreover, the Board stressed that the applicant had not justified its request for additional floor area, especially since, based on the applicant's Uniqueness Study, the buildings adjacent to the subject site have between 0.00 and 3.00 FAR and are conforming uses, whereas the proposed building would be a non-conforming use. Additionally, the Board observed the nearest residential district is an R6A zoning district, which has a maximum allowable FAR of 3.00 (see Z.R. § 23-151), and as the applicant argued that the only use for the subject site is residential, the Board would be limited in how much of an FAR waiver it could grant. The Board stated that this difference in the applicant's request and the potential grant may mean this proposed building is not viable. Additionally, the Board stated that in an R6A zoning district, parking is required for 50% of the units and is waived if that number is less than five parking spaces (see Z.R. § 25-23), but, here, the applicant proposed 15 residential units, for which 8 spaces is required.

Furthermore, the Board discussed the applicant's Efficiency Analysis, which used a 30'-0" by 100'-0" corner lot as the example building instead of the generally presented example of an interior lot. The Board stated that the study's example corner lot benefits from the easy building access from two street frontages and to the remote core as well as a better layout for the commercial floor which could have an enclosed reception area. As the example corner lot does not increase the premium delta between the proposed example and proposed site as much as an interior lot example would, the Board concluded that the Efficiency Analysis demonstrated the advantages of the site's long and multiple frontages which allow the applicant to make more use of a window wall, the efficient location for the core, and access to retail, stairs, and elevator core with leftover usable space for corridors.

Finally, the Board compared this subject application to

BSA Cal. No. 105-15-BZ, in which the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R4 zoning district, the development of a three-story, mixed-use commercial and community facility building that does not comply with zoning regulations for floor area (Z.R. § 24-11), lot coverage (Z.R. § 24-11), front yards (Z.R. § 24-31), parking (Z.R. § 25-31), and use contrary to Z.R. § 22-00, on a 7,965 square foot triangular lot with contamination. Although the site in BSA Cal. No. 105-15-BZ has more square footage than the subject site, the Board detailed how the physical configuration of the two Premises are similar, but the site in the subject application does not have the added burden of contamination. The Board requested the applicant distinguish this current application and BSA Cal. No. 105-15-BZ, in which the applicant claimed that the site was not suitable for a residential use and could not be developed without the requested waivers, in part, because the triangular site was surrounded on four sides by roadways, and, here, where the applicant claims its similarly situated site is suitable for residential. The Board described how a triangular site with a core in the center of the building is inefficient for commercial and residential use because the need to split the site into left and right units, as opposed to creating full floor units, results in a shape that affects the desirability of any commercial, retail, and rental space. The Board noted that, here, the applicant could propose a commercial use for the entire lot and request a parking waiver so that it may use the available 4.8 FAR available for community facility use in a C8-2 zoning district (see Z.R. § 33-123) and, thereby, make use of the full floor plate at the Premises.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated January 28, 2022, 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, February 7, 2022.

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

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative: Vice-Chair Chanda.....1

Negative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....4

THE RESOLUTION –

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The decision of the Department of Buildings (“DOB”), dated June 17, 2019, acting on Alteration Type 1 Application No. 321815611, reads in pertinent part: “Proposed residential use (UG 2) in a manufacturing district is contrary to 42-10 Z.R.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an M1-2 zoning district, the construction of a four-story, plus cellar, residential building, contrary to Z.R. § 42-10.

A public hearing was held on this application on January 26, 2021, after due notice by publication in *The City Record*, with continued hearings on April 13, 2021, June 15, 2021, October 4, 2021, and January 11, 2022, and then to decision on February 7, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 1, Brooklyn, recommends approval of this application on condition that the developer is to offer two units that would be affordable, up to 60% Average Median Income (“AMI”). The Board received one form letter in support for this application.

I.

The Premises are located on the south side of Harrison Place, between Bogart Street and Morgan Avenue, within an M1-2 zoning district, in Brooklyn. With approximately 25 feet of frontage along Harrison Place, 88 feet of depth, and 2,199 square feet of lot area, the Premises are currently vacant.

II.

The applicant proposes to construct a four-story, with cellar, residential building with seven residential dwellings and a total floor area of 4,838 square feet (2.2 FAR). The applicant represents that the cellar would contain the mechanical rooms, storage space, and the lower half of a residential unit located on the first floor and cellar, with approximately 904 square feet of exempt floor area; the first floor (1,067 square feet) would consist of the remainder of the residential unit located on the first floor and cellar and the residential lobby for the building; the second (1,257 square feet), third (1,257 square feet), and fourth (1,257 square feet) floors would consist of two dwelling units each. The applicant seeks a waiver of Z.R. § 42-10 to permit residential use in the M1-2 zoning district as it contends that the subject lot’s location as an interior lot, narrow width, and shallow depth limit the possible floor plate for a conforming commercial or manufacturing use and hinders the feasibility of development and desirability of any conforming warehouse or commercial structure.

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.

A.

First, as per Z.R. § 72-21(a), 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. More particularly, the applicant claims that the status of the zoning lot as an interior narrow lot with shallow depth, located on a narrow one-way street, with a history of only residential development prevents the subject site from being developed in strict conformity with the Zoning Resolution. The applicant contends that the depth of the subject lot is significantly shallower than the other lots within the subject block and within the vicinity. In support of this contention, the applicant submitted a radius diagram which demonstrated that of the ten zoning lots with frontage on Harrison Place, five (50 percent) have a depth of 100 feet or more. The applicant continues by stating that conforming use of the limited area of a complying building at the subject Premises would additionally be affected by the conditions of Harrison Place, which it claims is a narrow, one-way street that is not conducive to the as-of-right commercial or manufacturing development. The applicant describes Harrison Place, which measures 60 feet across, as narrow enough to create difficulties for site access for deliveries and certain uses, as well as the one-way access, limited foot traffic and vehicular traffic, and the applicant claims that these issues are detrimental to a proposed as-of-right business. The applicant also declares that permitted retail or commercial use would be undesirable and infeasible in comparison to alternate nearby locations on larger, two-way streets, including Knickerbocker Avenue, which is located one block east of the subject Premises.

Additionally, the applicant submitted a Vacant Lot Study, which demonstrated that within an approximate two block radius of the subject Premises, 23 sites are vacant or undeveloped. Of the 23 sites, 12 (52 percent) sites consist of adjacent lots that are in common ownership, allowing for common use; 8 (35 percent) sites are larger than the subject lot; and 3 (13 percent) sites are both larger and in common use. The applicant argues that this study demonstrated that the lot is uniquely situated as it does not provide for development with adjacent parcels and is narrow and shallower than other individual parcels within the study area. The applicant further argues that most lots of comparable width that are vacant in the area are owned and used in common with adjacent parcels, either for parking, storage or for accessory parking with commonly owned adjacent buildings, and the lots that are not owned in common with adjacent parcels are almost all double the size or more of the subject lot with widths at a minimum of 50 feet and depths at a minimum of 100 feet. The applicant concludes this argument by speculating that because these larger parcels, if developed, would provide larger floorplates that are more conducive to permitted manufacturing and commercial uses than the subject Premises and that the combination of factors creates a unique condition for the subject site that prevents reasonable return from as-of-right development.

B.

Next, as per Z.R. § 72-21(b), the applicant submits that due to the physical condition of the subject zoning lot, there is no possibility that the development of manufacturing or

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commercial use on the lot in strict conformity with the provisions of the Zoning Resolution would bring the owners a reasonable return. Moreover, the applicant states that a grant of a variance is necessary to enable the applicant to realize a reasonable return from the use of the subject Premises. Furthermore, the applicant argues that the unique physical conditions of the subject zoning lot and its location on Harrison Place directly limit the possible return from conforming development of the Premises. In support of this contention, the applicant submitted a financial report which concludes that the expected return on as-of-right development would yield a

-51.3% loss on the owner's investment. The financial report further concludes that the proposed four-story, with cellar, residential development of the Premises would allow for a 0.9% return on the owner's development.

Additionally, the applicant represents that the difference in anticipated return as articulated in the financial report is tied to the unique conditions affecting the subject site. For example, the applicant states that the shallow interior lot, measuring 25 feet wide by 88 feet deep, would allow for a three-story building to contain artist lofts and studio spaces as the most feasible as-of-right option. The applicant declares that the other as-of-right option of a small one-story warehouse structure would be undesirable to potential tenants in comparison to development on other sites that provide for wider and deeper floor plates and, as a result, would be infeasible to construct. Comparatively, the applicant declares that the proposed development would yield a positive, rather than negative, return on investment.

C.

As per Z.R. § 72-21(c), the applicant represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of a adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that the proposed development of the subject zoning lot with a residential structure is in line with the use in the surrounding area because the properties immediately adjacent to the subject Premises are residential, mixed-use residential, and commercial in buildings similar in structure to that of the proposed project. The applicant further describes that the eastern portion of the block fronting on Morgan Avenue is also developed with comparable residential buildings and that north and northwest of the site are manufacturing uses that are located on larger parcels that span entire block frontages. The applicant further contends that the neighborhood in which the subject site is located is characterized by a mix of land uses that includes both higher density residential uses as well as light manufacturing, warehouse, and automotive uses characteristic of the M1 zoning districts in the area. The applicant states that the residential building stock includes attached- and semi-detached rowhouses, in addition to smaller apartment buildings of three to five stories, whereas the manufacturing building stock is mostly one-story buildings.

D.

As per Z.R. § 72-21(d) states, the applicant argues the

practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, which the applicant describes as an interior lot with shallow depth located on a narrow one-way street. The applicant concludes that the unnecessary hardship resulting from these unique physical conditions was not caused by the owner of the Premises or a predecessor in title.

E.

As per Z.R. § 72-21(e), the applicant submits that the requested variance of the use requirements of the M1-2 zoning district to allow residential use and the requested size of the proposed residential building is the minimum necessary to afford the owner of the Premises the necessary relief to allow the reasonable use of the property. The applicant represents that without the requested relief, the owner would be unable to develop the site with a feasible structure due to the unique conditions affecting the site.

I.

By letter dated January 8, 2021, the Fire Department, Bureau of Fire Prevention states that it has reviewed the application and objects as rooftop access has not been provided. As per Section 504.4.1 of the 2014 Fire Code Access, "Access to building rooftops shall be provided for fire operations by providing unobstructed access to the rooftop, including unobstructed passage across the building parapet, perimeter fence or other obstructions, and a safe landing...." Based on the foregoing the Fire Department respectfully requests that the Board of Standards and Appeals not accept this application as filed. Plans shall be revised to show compliance with Section 504.4.1 for Fire Department Rooftop Access.

By letter dated, June 2, 2021, the New York City Department of Environmental Protection ("DEP") states the Bureau of Sustainability has reviewed the April 2021 Environment Assessment Statement ("EAS") and the March 2021 Phase I Environmental Site Assessment (Phase I). The March 2021 Phase I report revealed the historical on-site and surrounding area land uses consisted of a variety of residential, commercial, and industrial uses including an outdoor dining area, commercial buildings, mixed-use buildings, residential buildings, an orphanage, a tailor shop, an electrical equipment manufacturer, a zipper manufacturer, metal finishing, a bank, a bakery, mirror works, auto repair, a stone and gravel construction company, machine shops, chemical products manufacturing, casket manufacturing, sheet metal works, meat cutting, a stone yard, a nut company, etc. Regulatory databases identified 19 spills and 1 historical auto site within 1/8 mile; 27 underground storage tanks, 24 aboveground storage tank sites, and 2 dry cleaners within 1/4 mile; 41 leaking storage tank sites, 12 voluntary cleanup program sites, and 5 brownfield sites within 1/2 mile; 1 National Priority List and 3 manufactured gas plant sites within 1 mile of the project site.

Based upon its review of the submitted documentation, DEP has the following comments and recommendations to BSA:

- BSA should inform the applicant that based

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on the historical on-site and/or surrounding area land uses, a Phase II Environmental Site Assessment is necessary to adequately identify/characterize the surface and subsurface soils, groundwater, and soil vapor 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 (“CEQR”) 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, semivolatile 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 the NYSDOH 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 August 24, 2021, DEP, Bureau of Environmental Planning and Analysis states that it has reviewed the Air Quality and Noise chapters of the April 27, 2021, EAS, and support materials. DEP has the following comments:

Air Quality

Industrial Source:

1. Please state the name of the representative emission site used to determine emission rates for the Special Treatment Iron Works Facility and 786 Iron Works Corp. in the

Emission Profile - Iron Works Facilities section. In addition, please discuss the reasons this site is representative of the facilities under analysis.

Noise

2. Please provide the data downloaded from the noise meter used during the ambient noise monitoring periods
3. In the Measurement Location and Equipment section, the text refers to ‘each monitoring location’. Given that noise monitoring was conducted at one location, please revise text to “the monitoring location.”

V.

At hearings, the Board expressed concerns about the applicant’s supporting evidence for its Z.R. § 72-21 (a), (b), (c), and (e) findings, noting that the application was riddled with errors and needed to be significantly revised. With regards to the (a) finding, the Board requested additional support for the applicant’s assertion that the size and shape of the lot drives a hardship and stated that the applicant’s originally submitted three-story as-of-right artist lofts and gallery scenario had inflated construction costs and that this version inexplicably was shown as costing more to construct than the proposed four-story residential building, hence does not support the applicant’s contention that the site poses a hardship.

With regards to the (b) finding, the Board stated that the proposed four-story residential project also presented inflated construction costs, including a costly sloped footing in the cellar that does not appear on the as-of-right plans. Additionally, the Board found that the financials utilized were inappropriate and did not contain comparable land and rental values, hence, in combination with the inflated costs of the as-of-right project, do not establish that either the as-of-right or the proposed project is viable.

Consequently, the Board requested the applicant submit proposals for a lesser variance to bolster its (b), (c) and (e) findings, including revised financial analyses to reflect Board comments, including the use of standardized construction costing methods, and noted that the block on which the site is located is heavily industrial and commercial, with only four adjacent three- to four-story buildings that are remnants of the pre-1961 residential character. The Board directed the applicant to submit a four-story lesser variance office scenario with bulk waivers only that would increase the floor area and eliminate the rear yard so that the building could be built full to the rear lot line, thereby increasing building and floor plate efficiency and allowing for the conforming use of all of the as-of-right floor area plus additional floor area, similar to the project that was approved for BSA Cal. No. 168-15-BZ at 58 Grattan Street, Brooklyn.

While additional materials were submitted to support and establish the (a) finding, no such requested lesser variance scenario was submitted for the second hearing. As to the (b) finding, although the financials were revised, they

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continued not to utilize a standardized construction costing method, nor to support the applicant's contention that the as-of-right three-story artists loft building was not viable nor that the proposed four-story residential building was viable because construction costs continued to be inappropriately inflated and rental incomes irrationally depressed. The Board noted that renovated manufacturing buildings in the immediate area were being let as high-rental artist, artisan, and tech sector lofts and that such locations should be used as comparables for rental rates in the as-of-right project. The Board also stated that if a (b) finding could be established once the financials had been adjusted to reflect appropriate construction costs and rental rates and, assuming a use waiver to allow residential use could be considered in lieu of a conforming but non-complying artist loft building, establishing the (e) finding for the residential building demanded that the building be reduced in floor area and height to align with the adjacent three-story residential buildings so as not to advantage the subject site over the adjacent properties.

For the third hearing the applicant submitted a four-story commercial lesser variance option that, rather than being built full to the lot lines as directed by the Board, provided the required rear yard setbacks at all but the first floor and maintained shallow floor plates and resulted in inefficiently laid out office/artist loft floors subdivided by a large stair, elevator, and service core. The applicant again submitted financial studies that did not support its (b) finding. Instead, the financial studies applied standardized construction costs that were inapplicable to the project type and were inflated to increase the overall costs of the proposed project. The applicant continued to refuse to reduce the scope of its request, submitting revised drawings for the proposed four-story residential building with only minimal modifications, and retaining the costly sloped footing that does not appear in the as-of-right or four-story artist loft lesser variance scenarios.

The Board again directed the applicant to revise the financials to reflect construction costs that are appropriate to the project type, to reduce the number of stories on the proposed residential project by one, which would, in turn, reduce the requested amount of floor area and be more in line with the three-story heights and floor areas of the adjacent buildings and to remove the sloped footing at the cellar.

For the fourth hearing, applicant submitted materials that showed that (1) none of the requested changes had been made to the proposed four-story residential building; (2) the four-story commercial lesser variance scenario had not been modified to reflect the Board's comments; and (3) the financial studies continued to over-inflate costs, using inappropriate and duplicative standardized construction costing methodologies which sought to increase the overall costs of the proposed project. In an effort to arrive at the appropriate standardized cost of a simple as-of-right project and to establish that such a project is infeasible, the Board directed the applicant to prepare drawings reflecting a simple, as-of-right warehouse building and provide

financials using standardized methodologies and appropriate comparables for the as-of-right and proposed residential project. The Board reiterated that the project should be reduced by one floor to be more in line with the adjoining residential neighbors with respect to floor area. Finally, the Board directed the applicant to complete its response to the CEQR questions that were submitted by DEP.

At the fifth hearing, eleven weeks after the fourth hearing and with ample time to respond to Board comments, the applicant nonetheless made none of the requested modifications to the proposed four-story residential project. In addition to directing the applicant to reduce its ask to a three-story residential building so that it could meet the (e) finding, the Board stated at every prior hearing that a reduced variance request would bolster the applicant's (c) finding, as the Board questioned the appropriateness of the proposed project at the subject block, which faces a storage unit, is on a heavily commercial block with only three small residential buildings in disrepair. Furthermore, the applicant had not modified the four-story lesser variance commercial building to respond to the Board's suggestion that the applicant review and tailor its proposal to the Board's grant of a Z.R. § 72-21 variance in BSA Cal. No. 168-15-BZ at 58 Grattan Street, Brooklyn near the subject Premises, in which the Board permitted the development of a four-story, plus cellar, commercial building that does not comply with the underlying regulations pertaining to floor area ratio, front wall height, setback, and parking, contrary to Z.R. §§ 43-12, 43-43, and 44-21.

The applicant submitted responses to the Board's repeated requests for changes in the proposed project and in supporting materials by making the change to a lesser degree while changing other assumptions in the project to balance out their reductions and reaching a conclusion that the requested change would not work. For example, the Board requested an as-of-right scenario for a one-story warehouse built full to the lot lines, and the applicant presented a one-story, plus cellar, warehouse, which included an elevator and two stair cores, resulting in less usable space, higher costs, and a less efficient, hence, less desirable end-product. The applicant's proposed project contains a cellar with a costly and inefficient sloped footing, whereas the as-of-right has a full cellar. At the fifth hearing, the applicant, for the first time, also introduced new costs associated with Metropolitan Transit Authority ("MTA") monitoring. The Board concluded, therefore, that although the (a) finding had been established, applicant had not persuaded the majority that either the (b) or (e) findings had been established.

A minority of the Board expressed support for this application stating that the dimensions of the subject site are common with past BSA use variance grants, including that of BSA Cal. No. 168-15-BZ, which was a bigger building with more availability for parking. Furthermore, the minority found that the (a) finding was justifiable as the subject Premises are located in a fringe area that is changing from manufacturing and warehouse use to residential and commercial use. Specifically, the minority stated that the

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subject block front has many residential buildings and that the built height of the proposed project was not out of context with the neighborhood. While the minority did concede that the applicant's comparables for the residential units were not appropriate, it stated that the retail and office adjustments were fair, and the presence of the cellar in the as-of-right scenarios is justified for truck entrance and exit. The minority also stated that it was not convinced that the rest of the Board's suggestions to the applicant, while numerically viable, were realistic and based on the market conditions which demonstrated that an office space or warehouse on a 2,000 square foot lot in the area would not appeal to prospective tenants.

Based upon its review of the record, the Board has determined that this approval is not eligible for relief under Z.R. § 72-21 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, February 7, 2022.

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 5th Avenue, Block 6109, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application dismissed.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda
Commissioner Ottley-Brown, Commissioner Sheta, and
Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 19, 2019, acting on New Building Application No. 321947523, reads in pertinent part: “1. ZR. 36-21: Proposed reduction and waiver of required parking is contrary to section 36-21 Z.R.”

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 and ambulatory diagnostic or treatment facilities (UG 4), contrary to Z.R. § 36-21.

A public hearing was held on this application on November 10, 2020, after due notice by publication in *The City Record*, with adjourned hearings on February 8, 2021, April 26, 2021, and September 13, 2021, and a continued hearing on January 11, 2022, then to decision on February 7, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown

performed inspections of the Premises and surrounding neighborhood. Community Board 7, Brooklyn, recommends approval of this application with the following conditions: 1) a redesign to include a turnaround area for vehicles – 92nd Street; 2) a redesign to include the ability for vehicles to enter and exit lot without traffic issues at 92nd Street (example “No Left Turn” at 92nd Street).

The Board received two letters of objection citing concerns about the current lack of available parking, increased congestion and traffic in the surrounding area, loss of light and air from the proposed project, noise from ongoing construction and use at the subject Premises, danger to pedestrians, and loss of light and air.

I.

The Premises are located on the southeast corner of the intersection of Fifth Avenue and 92nd Street, partially within a C2-3 (R6B) and partially within a R5B, in the Special Bay Ridge District, in Brooklyn. With approximately 90 feet of frontage on Fifth Avenue, 116 feet of frontage along 92nd Street, and 10,443 square feet of lot area, the Premises are occupied by an existing one-story, commercial building.

II.

Z.R. § 73-44 permits the Board to reduce the number of accessory off-street parking spaces required under Z.R. § 36-21 for UG 4 ambulatory diagnostic or treatment facilities. The number of parking spaces required in the subject C2-3 zoning district is one per 400 square feet of new floor area for both the proposed UG 4 ambulatory diagnostic or treatment facility and UG 6 office uses within parking requirement category B1. A waiver under Z.R. § 73-44 would permit a reduction in the required accessory off-street parking spaces to one per 800 square feet of new floor area.

III.

The applicant proposes to construct a new three-story, plus cellar, mixed-used commercial (UG 6 office) and community facility (UG 4 ambulatory diagnostic or treatment facility) building with approximately 19,959 square feet (1.91 FAR). The applicant states that the cellar (7,446 exempt gross square feet) would contain office and mechanical space; the first floor (approximately 6,784 square feet of floor area) would contain office and mechanical space and an entrance lobby for the community facility uses proposed for the upper floors; the second (8,215 square feet of floor area) and third floors (approximately 4,960 square feet of floor area) would contain community facility use to be occupied by ambulatory diagnostic or treatment facility uses.

The applicant seeks relief pursuant to Z.R. § 73-44 and proposes to construct six parking spaces at the subject Premises. Under Z.R. § 36-21, for the proposed 19,958 square feet of floor area, 50 parking spaces would be required at the subject site. Pursuant to Z.R. § 73-44, the applicant seeks to reduce the required accessory off-street parking to 25 accessory parking spaces. The applicant contends that pursuant to Z.R. § 36-23, following the reduction under the Z.R. § 73-44 special permit, the

MINUTES

resulting 25 accessory parking spaces would be waived for a site located in a C2-3 zoning district, resulting in no required accessory parking spaces.

The applicant states that it would locate the proposed six accessory off-street parking spaces at the ground level of the eastern portion of the subject lot. The applicant asserts that the parking area would be accessible via an existing curb cut on 92nd Street. The applicant further represents that an existing concrete wall with a fence is located at the northern portion of the easterly lot line, separating the building on the adjacent lot from the existing parking area for the current building, and a new opaque fence is proposed for the southern portion of the easterly lot line to provide additional screening.

IV.

Throughout staff review of this application and at public hearings, the staff and the Board requested that the applicant submit a parking demand study and noted that, without the information provided in the study, the Board could not make a factual determination about whether the requested reduction to 25 parking spaces was justifiable, given the location and the proposed uses. The applicant refused to submit the study and represented that the proposed development does not meet the threshold requirements for a parking study pursuant to Chapter 16 of the City Environmental Quality Review ("CEQR") Technical Manual. The applicant further declares that the findings under Z.R. §§ 73-44 and 73-03 do not state that a parking study is required. Furthermore, at the initial hearing the Board stated that it did not agree that a project that receives a parking reduction pursuant to the Z.R. § 73-44 special permit should also be entitled to the Z.R. § 36-23 waiver.

The applicant posits that the applicability of Z.R. § 36-23 to the proposed development subsequent to the grant of a special permit under Z.R. § 73-44 is the determination of DOB and not the Board. The applicant elaborated on this argument by stating that the plain language under Z.R. § 73-44 sets forth limited findings in order to permit a reduction in the ratio of accessory parking spaces required for qualified uses and does not set forth any specific numbers as to the amount of accessory parking spaces that may be required. The applicant represents that upon grant of the special permit, the ratio of required spaces is adjusted by the number of accessory spaces required per square foot and not any specific amount. The applicant contrasts this determination with the waiver provisions available under Z.R. § 36-23, which apply to specific totals for accessory parking spaces, regardless of floor area or required parking ratios. The applicant concludes that the two provisions use different standards, and there is no statutory requirement linking the two provisions because nowhere in the plain language of the Zoning Resolution is there an exclusion or an exception prohibiting application of the waiver provisions of Z.R. § 36-23 to a site subject to the special permit granted under Z.R. § 73-44.

In support of this contention, the applicant submitted the following Board resolutions, drawing attention to the

relevant language: BSA Cal. Nos. 2016-4123-BZ: "the Board takes no position as to whether approval of the subject special permit application qualifies the site for a parking waiver pursuant to Z.R. § 36-231, which is a determination subject to review by DOB"; 258-15-BZ: "the Board takes no position as to whether approval of the subject special permit application qualifies for a parking waiver pursuant to Z.R. § 36-231 which is a determination subject to review by DOB"; 55-10-BZ: "the Board takes no position as to whether the approval of the subject special permit application qualifies the site for a parking waiver pursuant to Z.R. § 36-231, which is a determination subject to review by the Department of Buildings"; and 163-13-BZ: "the Board takes no position on whether the required parking may be waived entirely and relies on DOB to make such determination".

The Board responds that since the as-of-right parking requirements pursuant to Z.R. § 36-21 exceed the number of spaces entitled to the waiver, to permit such an additional waiver would effectively be "double-dipping," exceeding the Zoning Resolution's intent and has specifically stated in its reviews and resolutions for the Z.R. § 73-44 special permits granted in the last several years that such an additional waiver is inappropriate. The Board further states that the parking demand studies assume a reduction to the number of spaces permitted by the special permit and not a reduction to zero, so a further reduction under Z.R. § 36-23 would contradict the Board's findings.

Z.R. § 73-02 requires that the Board's determinations be "supported by substantial evidence or other data considered by the Board in reaching its decision." Moreover, Z.R. § 73-03(a) states that

under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use or modification of use, parking or bulk regulations at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit. In each case the Board shall determine that the adverse effect, if any, on the privacy, quiet, light and air in the neighborhood of such special permit use or modification of use, parking or bulk regulations will be minimized by appropriate conditions governing location of the site, design and method of operation.

In addition, Z.R. § 73-04 states the Board "may prescribe such conditions and safeguards to the grant of special permit (uses) as it may deem necessary in the specific case, in order to minimize the adverse effects of such special permit upon other property and the community at large," and Z.R. § 73-41 states that the Board "shall have the power to permit modification of use or parking regulations of this Resolution, and shall have the power to impose appropriate conditions and safeguards thereon."

In light of the authority granted to the Board by the Zoning Resolution to safeguard the community from disadvantages imposed by inadequate on-street parking that could be exacerbated by the proposed on-site parking

MINUTES

reduction, the Board requires parking demand studies to determine whether the requested parking reduction is appropriate given area parking conditions and will limit the size of the reduction based on the information provided in the studies. Since 1998, 78% of Board resolutions for waivers under Z.R. § 73-44 reference the Board's findings made pursuant to parking or transportation studies submitted by the applicant. Board notes that in all four cases the applicant referenced, the applicants submitted parking demand studies. The Board further states that on applications for a special permit pursuant to Z.R. § 73-44, it regularly requests parking demand studies and without them, an application for this special permit is incomplete. As such, the Board concluded that because readily available information has not been provided, applicant has failed to prosecute the case.

Based upon its review of the record, the Board has determined that this application has not been fully prosecuted 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 *dismiss* this application for failure to prosecute.

Adopted by the Board of Standards and Appeals, February 7, 2022.

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 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

2019-304-BZ & 2019-305-A

APPLICANT – Sheldon Lobel, P.C., for 82 Willis, LLC, owner

SUBJECT – Application December 19, 2019 – Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §§23-662(a) and 123-662 (b)) (height). Waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district.

PREMISES AFFECTED – 180 East 132nd Street, Block 2260, Lot 180, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for adjourned hearing.

2020-36-BZ

APPLICANT – Eric Palatnik, P.C. for Bolla City Holdings, LLC., owner.

SUBJECT – Application April 27, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 8401 Flatlands Avenue, Block 8005, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for continued hearing.

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – 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.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for continued hearing.

MINUTES

PUBLIC HEARINGS
MONDAY-TUESDAY, FEBRUARY 7-8, 2022
2:00 P.M.

Negative:.....0
ACTION OF THE BOARD – Laid over to March
14-15, 2022, at 10 A.M., for decision, hearing closed.

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

Carlo Costanza, Executive Director

ZONING CALENDAR

2021-36-BZ & 2020-90-A

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application June 2, 2021 – Variance (§72-21) to permit the development of a two-family detached home (UG 2) contrary to ZR §23-461(a) (side yard), R3X Zoning District. 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 72-01-(g). Lower Density Growth Management Area.

PREMISES AFFECTED – 244 Gansevoort Boulevard, Block 761, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

2021-44-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for DK Bedford Realty LLC, owner.

SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space), ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3204 Bedford Avenue, Block 7606, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

2021-45-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Max Zalta, owner.

SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space and lot coverage), ZR §23-631(b) (perimeter wall height) and ZR §23-47 (rear yard). R3-2 zoning district.

PREMISES AFFECTED – 1714 East 27th Street, Block 6809, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

BULLETIN

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Monday, February 28, 2022**

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224-14-BZ & 225-14-A	1534 Victory Boulevard, Staten Island
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DOCKETS

New Case Filed Up to February 28, 2022

2022-11-A

95 Pine Terrace, Block 6245, Lot(s) 0006, Borough of **Staten Island, Community Board: 3**. Proposed development of a detached three-story, two family residential dwelling partially inside of the bed of a mapped street contrary to General City Law §35. R3X (Special Richmond Purpose District) R3X(SRD) district.

2022-12-BZ

68-01 Northern Boulevard, Block 1164, Lot(s) 0045, Borough of **Queens, Community Board: 3**. Special Permit (§73-243) to permit an eating and drinking establishment (Chick-fil-A) with an accessory drive-thru contrary to ZR §32-10. C1-2/R4 zoning district. R4/C1-2 district.

2022-13-A

97 Industrial Loop, Block 7206, Lot(s) 00264, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District. M3-1 district.

2022-14-BZ

1961 East 21st Street, Block 6827, Lot(s) 0059, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a detached two-story single-family home contrary to underlying bulk requirements. R3-2 zoning district. R3-2 district.

2022-15-BZ

5 Little Clove Road, Block 00661, Lot(s) 28, 31, 32, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-126): to permit the development of an ambulatory diagnostic or treatment health care facility. R3X Lower Density Growth Management Area. R3X district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, MARCH 28-29, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, March 28th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday March 29th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

1069-27-BZ

APPLICANT – Glen V. Cutrona, AIA, for Frank Mormando, owner.

SUBJECT – Application March 2, 2021 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 2021. C1-2/R5 zoning district. PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

581-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Salamander Realty, owner.

SUBJECT – Application January 25, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance permitting the operation of a trade school, meeting hall and offices (Use Groups 6 & 9) which expired on December 21, 2021. R5 zoning district.

PREMISES AFFECTED – 24-01 to 24-11 36th Avenue, Block 338, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP

SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board's Rules of Practice and Procedures. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.

COMMUNITY BOARD #1SI

1181-80-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Sai Yan Chen, owner.

SUBJECT – Application May 5, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted a four story office and warehouse building which expired on April 7, 2021. R6 zoning district.

PREMISES AFFECTED – 62-07 Woodside Avenue, Block 1294, Lot 20, Borough of Queens.

COMMUNITY BOARD #2Q

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolph Clausi, owner.

SUBJECT – Application January 7, 2022 – Extension of Time to Obtain a Certificate of Occupancy 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 November 11, 2021. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corp., owner.

SUBJECT – Application May 3, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 1, 2020; Waiver of the Board's Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking which expired on August 15, 2021; Waiver of the Board's Rules of Practice and Procedures. R3-2/C2-3 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, Block 11712, Lot 28, Borough of Queens.

COMMUNITY BOARD #10Q

CALENDAR

72-11-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.

SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

2022-6-BZY

APPLICANT – Herrick, Feinstein LLPC, for Griffon Gansevoort Holdings LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning.

PREMISES AFFECTED – 55 Gransevoort Street, Block 644, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

2020-58-A and 2020-59-A

APPLICANT – Eric Palatnik, P.C., for Kenneth Chapman, owner.

SUBJECT – Application July 17, 2020 – Proposed construction of a single-family home on a property not fronting on a mapped street contrary to General City Law (“GCL”) 36. R1-2 zoning district.

PREMISES AFFECTED – 10, 12 Jasmine Way, Block 695, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #1SI

2021-2-A thru 2021-7-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 99-21 Hollis Avenue LLC, lessee.

SUBJECT – Application January 13, 2021 – Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 99-21 Hollis Avenue aka 191-01/191-09/191-13/192-01/192-05/192-13 Hollis Avenue, Block 10839, Lot (s) 1, 50, 49, 48, 47, 46, Borough of Queens.

COMMUNITY BOARD #4M

2021-73-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Chelsea 24th Street LLC, owner.

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-6 zoning district.

PREMISES AFFECTED – 113 West 24th Street, Block 800, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #4M

ZONING CALENDAR

2021-29-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joselito Lopez, owner.

SUBJECT – Application May 3, 2021 – Variance (§72-21) to permit the construction of a two-story, two-family residential building that does not provide one required front yard contrary to ZR §23-45. R4A zoning district.

PREMISES AFFECTED – 3904 Orloff Avenue, Block 3263, Lot 195, Borough of Bronx.

COMMUNITY BOARD #8BX

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY
FEBRUARY 28 AND MARCH 1, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

7-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.

SUBJECT – Application August 30, 2016 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 8, 2016; Amendment to permit a change in hours of operation. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, 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 Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”) and an extension of time to obtain a certificate of occupancy, which expired on February 14, 2018, for a previously approved variance, which permitted the operation of physical culture establishment (“PCE”) pursuant to Z.R. § 72-21.

A public hearing was held on this application on April 26, 2021, after due notice by publication in *The City Record*, with a continued hearing on January 24, 2022 and then to decision on February 28, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 7, Queens, recommends approval of this application.

The Premises are located at the north side of Cross Island Parkway, between Clintonville Street and 154th Street within a C1-2 (R3-2) zoning district, in Queens. With approximately 295 feet of frontage along Cross Island Parkway, 231 feet along Clintonville Street, 156 feet of frontage along 14th road, and 403,000 square feet of lot area, the Premises are occupied by a shopping center.

The Board has exercised jurisdiction over the Premises since August 8, 1995, when, under the subject calendar number, the Board granted a variance, for a term of ten

years, to permit, in a C1-2 (R3-2)/R3-2 zoning district, a physical culture establishment in a cellar and two-story building within a larger shopping center development on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the variance be limited to the term of ten years, to expire on August 8, 2005; the 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 Code, and any other relevant laws under the jurisdiction of the Department; and substantial compliance be completed in accordance with Z.R. § 72-23.

On April 25, 2006, under the subject calendar number, the Board amended the resolution to permit an extension of term for ten years from the expiration of the prior grant, to expire on August 8, 2015, to approve the change in the operator of the PCE and to approve minor interior reconfigurations on condition that all work substantially conform to drawings filed with the application; the term of the grant be for ten years from the expiration of the prior grant, to expire on August 8, 2016; the hours of operation be limited to weekdays, 5:30 a.m. to 11:00 p.m. and weekends, 8:00 a.m. to 10:00 p.m.; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; local law 58/87 compliance be reviewed and approved by 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) 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 applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdictions irrespective of plans(s)/configuration(s) not related to the relief granted.

On February 14, 2017, under the subject calendar, the Board further amended the resolution to grant an extension of the term of the variance for ten years from the expiration of the last grant, to expire on August 8, 2025 and amend the hours of operation on condition that all work and site conditions comply with drawings filed with the application; the grant be limited to a term of ten years, to expire on August 8, 2025; the hours of operation be limited to Monday through Friday, 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 10:00 p.m.; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the above conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained within one year, by February 14, 2018; fire safety measures be maintained as shown on the Board-approved plans; all conditions from the prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted

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by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved 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. Because this application was filed less than two years after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that the Premises continue to comply with all conditions of the Board's resolution, with the exception of delays in obtaining a certificate of occupancy. The applicant states that these delays resulted because the PCE is a single tenant in a large shopping center complex and subject to all violations that affect the rest of the Premises, even if these violations are unrelated to the PCE. The applicant claims that at the subject Premises, work was ongoing for more than one year to remove violations including several that were attached to the property at DOB but were for another property. Additionally, the applicant states that after the violations were cleared, the PCE was closed, and the entire staff was furloughed as a result of the COVID-19 pandemic, thereby stalling any further action in this matter.

The applicant originally sought an amendment to relocate the subject PCE to another space at the subject Premises, claiming that the current space does not lend itself to retail as a hardship. The applicant states that the zoning floor area of the PCE is 6,365 square feet at the first floor and 6,365 square feet at the second floor for a total zoning floor area for the PCE of 12,730 square feet with an additional 6,365 square feet of floor space in the cellar. At hearing, the Board stated that the applicant's Z.R. § 72-21 (a), (b), or (d) arguments did not substantiate relocating the PCE space and requested that the applicant return to the Board after the Z.R. § 12-10 text amendment affecting health and fitness establishments was approved. The Board notes that the text amendment states that health and fitness establishments up to 10,000 zoning square feet are permitted within a C1 zoning district, and there is no limitation on the amount of floor space within the cellar. The Board further declared that the requested amendment to relocate the PCE within the compound may be done as of right under the new text amendment provided that it complies with the 10,000 square foot zoning floor area per establishment limitation and other applicable provisions such as noise attenuation. Additionally, the Board discussed removing the term of the variance in light of the new text amendment. As such, the applicant withdrew the portion of the application requesting an amendment.

By letter dated April 26, 2021, the Fire Department states that the Bureau of Fire Prevention has reviewed the

application and states that the occupant load as per application number 420835644 is for 232 persons. An inspection was performed by Fire Department's Licensed Place of Public Assembly unit on February 16, 2021 and found to be in compliance with all applicable rules and regulations. These Premises are protected by a fire suppression system (sprinkler) and fire alarm system that has been inspected by the Fire Department. Based upon the foregoing, the Fire 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.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated February 14, 2017, so that as amended this portion of the resolution shall read: "to grant a two-year extension of time to obtain a certificate of occupancy, to expire on February 28, 2024; *on condition*:

THAT the term of the variance shall expire on August 8, 2025;

THAT if the Z.R. § 12-10 text amendment relating to health and fitness establishments is not successfully challenged, then the term of the grant shall be eliminated;

THAT the hours of operation shall be limited to Monday through Friday, 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 10:00 p.m.;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 7-95-BZ"), shall be obtained within two years, by February 28, 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 28, 2022.

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78-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, Ayer Re Development, LLC, owner,

SUBJECT – Application February 26, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a four-story mixed-use building which expired on March 10, 2019. C8-1 zoning district.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Block 7880, Lot 550, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”) and an extension of time to complete construction of a variance, granted pursuant to Z.R. § 72-21, which permitted the construction of a four-story, mixed-used residential (Use Group (“UG”) 2) and community facility (UG 4) building and expired on March 10, 2019.

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 7, 2022, and then to decision on February 28, 2022. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood.

The Premises are an irregularly shaped lot, located south of Union Turnpike and west of 242nd Street, within a C8-1 zoning district, in Queens. The Premises, which do not have frontage on a mapped street, are located within the boundaries of the Creedmoor Psychiatric Center Campus, on an approximately 330-acre parcel bounded by Winchester Boulevard, Union Turnpike, Hillside Avenue, and Cross Island Parkway and are currently vacant.

The Board has exercised jurisdiction over the Premises since March 10, 2015, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in a C8-1 zoning district, the construction of a four-story, mixed-use residential (UG 2) and community facility (UG 4) building with 57 dwelling units for persons 55 years of age or older, contrary to Z.R. § 32-11, 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 site and building: four stories, maximum of 66,563 square feet of floor area (0.80 FAR)(10,380 square feet of community facility floor area and 56,183 square feet of residential floor area), a maximum of 57 dwelling units, 75 parking spaces, and yards, open space, and site-circulation and configuration as set forth in the BSA-approved plans; an E-designation (E-360) is placed on the site to ensure proper hazardous materials remediation; the occupancy of the dwelling units

be limited to persons 55 years of age or older; no commercial catering be permitted at the site; landscaping be in accordance with BSA-approved plans; any change in owner or operator of the site be subject to the Board’s approval; the above conditions be listed on the certificate of occupancy; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by March 10, 2019; the approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

This prior grant was filed and approved in conjunction with companion cases under BSA Cal. Nos. 33-12-A, 34-12-A, 35-12-A, 36-12-A, and 37-12-A, which permitted a waiver pursuant to General City Law (“GCL”) § 36, to allow the proposed construction not fronting on a mapped street.

The time to complete construction having expired, the applicant now seeks an extension. Because this application was filed less than two years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules, of § 1-07.3(c)(2), of the Board’s Rules to permit the filing of this application.

Since the Board’s initial approval, the applicant states that it has not commenced construction, citing (1) internal reorganization at the non-profit organization leading the project, (2) removal of a lien on the subject property, (3) litigation and resolution of litigation against the organization leading the project, and (4) termination of the agreement by an initial prospective partner for development as reasons for the delay. In this application, the applicant represented that the factors that had caused the long delay were no longer applicable as most of the matters had been settled, and, as such, the applicant was ready to proceed with pending grant of this application. Over the course of hearings, the Board raised concerns regarding the applicant’s timeline for completion of construction of the proposed development. In response, the applicant submitted a revised timeline detailing anticipated dates for completion of work at the site.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction of the variance 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 *amend* the resolution dated March 10, 2015, so that as amended, this portion of the resolution shall read: “to extend the time to complete construction for four years, to expire on February 28, 2026, *on condition*:

THAT the following shall be the bulk parameters of the site and building: four stories, maximum of 66,563

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square feet of floor area (0.80 FAR)(10,380 square feet of community facility floor area and 56,183 square feet of residential floor area), a maximum of 57 dwelling units, 75 parking spaces, and yards, open space, and site-circulation and configuration as set forth in the BSA-approved plans;

THAT an E-designation (E-360) is placed on the site to ensure proper hazardous materials remediation;

THAT the occupancy of the dwelling units shall be limited to persons 55 years of age or older;

THAT no commercial catering shall be permitted at the site;

THAT landscaping shall be in accordance with BSA-approved plans;

THAT any change in owner or operator of the site shall be subject to the Board's approval;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, within four years, by February 28, 2026;

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. 78-11-BZ"), shall be obtained within four years by February 28, 2026;

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 28, 2022.

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post Industrial Thinking LLC, owner.

SUBJECT – Application January 7, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of two 3-story single family residences which expired on January 12, 2020; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 8-10 Underhill Avenue, Block 1122, Lot 37, 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 –

This is an application for a waiver of the Board's Rules of Practice and Procedures ("the Board's Rules") and an extension of time to complete construction, which expired on January 12, 2020, of a variance granted pursuant to Z.R. § 72-21 permitting the construction of two three-story, single-family residences.

A public hearing was held on this application on September 27, 2021, after due notice by publication in *The City Record* and then to decision on February 28, 2022. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood.

The Premises are located on the west side of Underhill Avenue, between Atlantic Avenue and Pacific Street, within an M1-1 zoning district, in Brooklyn. With approximately 30 feet of frontage along Underhill Avenue, 80 feet of depth, and 2,400 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since January 12, 2016, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, in an M1-1 zoning district, the construction of two three-story, single-family residences, contrary to Z.R. § 42-10, on condition that any and all work substantially conform to drawings as they apply to the objections filed with the application; 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 the 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; DOB not issue a certificate of occupancy until the applicant has provided DOB with DEP's approval of the Professional Engineer-certified Remedial Closure Report; 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. Because this application was filed less than two years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(c)(2), of the Board's Rules to permit the filing of this application.

Since the Board's initial approval, the applicant states that it has not commenced construction, stating that following the grant of the initial variance, the market was no longer viable for ground-up, speculative residential townhouse construction at the subject Premises because of its location at a busy interchange of wide streets and close proximity to the traffic and noise of Atlantic Avenue. The applicant represents that the market has fluctuated once again and oscillated back to the development of the proposed buildings as desirable in the area. The applicant further declares that its confidence in the market for single-family homes stems from the COVID-19 pandemic because the pandemic-induced demand for residences in the outer boroughs with outdoor green space would counteract the still-present weakness in the market for newly constructed

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single-family homes that are close to loud, busy intersections and roadways.

At hearing, the Board raised concerns regarding the accuracy of the applicant's construction timeline. In response, the applicant submitted an updated construction timeline with the proposed start and anticipated completion date for the proposed project.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction of the variance 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 *amend* 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, to expire on February 28, 2026, *on condition*:

THAT substantial construction shall be completed in accordance with Z.R. § 72-23;

THAT DOB shall not issue a certificate of occupancy until the applicant has provided DOB with DEP's approval of the Professional Engineer-certified Remedial Closure Report;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, within four years, by February 28, 2026;

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. Nos. 220-14-BZ and 221-14-BZ'), shall be obtained within four years by February 28, 2026;

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 28, 2022.

224-14-BZ & 225-14-A

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard, owner.

SUBJECT – Application August 31, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy, which will expire on January 30, 2022, for a previously approved Variance (72-21) to permit the addition of five (5) accessory off-street parking spaces to an ambulatory diagnostic or treatment health care facility, and an appeal pursuant to General City Law 35. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, 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 Scibetta5
Negative:0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy and an extension of time to complete construction, which expired on January 30, 2022, of a variance, granted pursuant to Z.R. § 72-21, permitting the addition of five accessory-off-street parking spaces to a Use Group ("UG) 4 ambulatory diagnostic or treatment healthcare facility, contrary to Z.R. §§ 22-14 and 52-41 (BSA Cal. No. 224-14-BZ) and construction within the bed of a mapped street, contrary to General City Law ("GCL") § 35 (BSA Cal. No. 225-14-A).

A public hearing was held on this application on January 11, 2022, after due notice by publication in *The City Record*, and then to decision on February 28, 2022. The Premises are comprised of two former tax lots located on the south side of Victory Boulevard between Little Clove Road and Slosson Avenue, in an R1-2 zoning district and the Lower Density Growth Management Zone, on Staten Island. The site was most recently two separate tax lots—former lot 80, a flag lot with approximately 50 feet of frontage along Victory Boulevard (the "Flagpole Portion"), and former lot 81, a rectangular lot with approximately 82 feet of frontage along Victory Boulevard and a depth of 225 feet (the "Regular Portion"), totaling approximately 45,394 square feet of lot area. The site is currently occupied by two buildings: (i) a one-story, medical facility with 13,636 square feet of floor area and (ii) a one-and-a half story, single-family residence, which the applicant represents would be demolished to accommodate the proposed additional off-street parking.

The Board has exercised jurisdiction over the Premises since January 30, 2018, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, in a R1-2 zoning district, the addition of five accessory off-street parking spaces to a UG 4 ambulatory diagnostic or treatment health care facility, contrary to Z.R. §§ 22-14 and 52-41 (BSA Cal. No. 244-14-BZ), and GCL §

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35 (BSA Cal. No. 225-14-A), permitting a proposed private front roadway within the bed of a mapped street, on condition that all work substantially conform to drawings filed with the application; a maximum of 21 parking spaces be permitted accessory to the UG 4 ambulatory diagnostic or treatment healthcare facility; no parking for the UG 4 ambulatory diagnostic or treatment health care facility be permitted on the site other than the 21 parking spaces indicated on the BSA-approved plans; fencing and landscaping be provided as indicated on the BSA-approved plans, repaired and/or replaced as necessary to maintain them in a first class condition; no curbing or fencing be permitted in the driveway proposed for former lot 80, specifically a long the proposed tax lot line separating the tax lots for the two single-family residences, as stated on the BSA-approved plans; cross easements be recorded against and for the benefit of each of the tax lots proposed to be created, one for each of the two proposed single-family residences, to provide both tax lots with full access to the full width of the 30-foot wide residential driveway and street frontage, as stated on the BSA-approved plans; the two single-family residents proposed on former lot 80 comply with all applicable provisions of the Zoning Resolution and any other applicable laws and codes; no waiver of General City Law § 36 has been granted by this application; parking on the portion of the lot dedicated to the UG 4 ambulatory diagnostic treatment health care facility comply with the following parking management plan:

1. 1534 Victory Boulevard site ingress occur at the easterly driveway only;
2. 1534 Victory Boulevard site egress occur at the westerly driveway only;
3. Site circulation be clockwise;
4. Ambulette/para transit vehicles discharge and collect patients in the northerly driveway aisle, parallel to Victory Boulevard, where no parking be designated or permitted;
5. The Parking Operations Manager be on Premises during business hours to foster efficient site maneuverability, including but not limited to: maintaining a clear driveway throat, reducing queuing and congestion, and prohibiting unnecessary reverse maneuvers;
6. During instances when all off-street parking spaces are occupied, the Parking Operations Manager temporarily indicate to drivers that the lot is full and to use available on-street parking; and
7. The Parking Operations Manager maintain adequate traffic control devices (e.g., pavement markings and signs) and inform ownership when replacement of the same is required;

the parking operations manager actively prevent double parking in front of the UG 4 ambulatory diagnostic or healthcare facility; the residential buildings on the site be fully sprinklered; substantial construction with respect to the

variance (BSA Cal. No. 224-14-BZ) be completed pursuant to Z.R. § 72-23, and all DOB and related agency application(s) filed in connection with the roadway proposed to be located in the bed of Victory Boulevard (BSA Cal. No. 225-14-A) be signed off by DOB and all other relevant agencies by January 30, 2022; that certificates of occupancy for all buildings at the site be obtained within four years, by January 30, 2022; 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.

The applicant represents that subsequent to the initial grant, it filed applications with the Board for two GCL § 36 waivers, under BSA Cal. Nos. 2020-58-A and 2020-59-A, which are required for the proposed residences in the rear and shown on the BSA-approved plans.

The time to complete construction and time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. The applicant represents that it has not obtained the certificate of occupancy or completed construction due to conditions and delays related to the COVID-19 pandemic. The applicant notes that it is just beginning to demolish the current structure on the property and to begin construction, pursuant to the approved BSA-plans.

At hearing, the Board raised concerns regarding the applicant's submitted construction timeline, which did not indicate that the proposed project would be complete within the requested four-year timeframe and contained incorrect filing dates. Additionally, the Board requested information on the current condition of the site. In response the applicant submitted photographs of perimeter, demonstrating that the site has been maintained since the initial grant and an updated construction timeline, with the corrected filing dates for actions already completed and anticipated dates for as-of-yet completed actions.

Based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy and extension of time to complete construction 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 30, 2018, so that as amended, this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy and the time to complete construction for four years from the date of expiration of the prior grant, to expire on January 30, 2026, and *on condition*:

THAT a maximum of 21 parking spaces shall be permitted accessory to the UG 4 ambulatory diagnostic or treatment healthcare facility;

THAT no parking for the UG 4 ambulatory diagnostic

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or treatment health care facility shall be permitted on the site other than the 21 parking spaces indicated on the BSA-approved plans;

THAT fencing and landscaping shall be provided as indicated on the BSA-approved plans, repaired and/or replaced as necessary to maintain them in a first-class condition;

THAT no curbing or fencing shall be permitted in the driveway proposed for former lot 80, specifically along the proposed tax lot line separating the tax lots for the two single-family residences, as stated on the BSA-approved plans;

THAT cross easements shall be recorded against and for the benefit of each of the tax lots proposed to be created, one for each of the two proposed single-family residences, to provide both tax lots with full access to the full width of the 30-foot-wide residential driveway and street frontage, as stated on the BSA-approved plans;

THAT the two-single-family residents proposed on former lot 80 shall comply with all applicable provisions of the Zoning Resolution and any other applicable laws and codes;

THAT no waiver of General City Law § 36 has been granted by this application;

THAT parking on the portion of the lot dedicated to the UG 4 ambulatory diagnostic treatment health care facility shall comply with the following parking management plan:

1. 1534 Victory Boulevard site ingress shall occur at the easterly driveway only;
2. 1534 Victory Boulevard site egress shall occur at the westerly driveway only;
3. Site circulation shall be clockwise;
4. Ambulette/paratransit vehicles shall discharge and collect patients in the northerly driveway aisle, parallel to Victory Boulevard, where no parking shall be designated or permitted;
5. The Parking Operations Manager shall be on Premises during business hours to foster efficient site maneuverability, including but not limited to: maintaining a clear driveway throat, reducing queuing and congestion, and prohibiting unnecessary reverse maneuvers;
6. During instances when all off-street parking spaces are occupied, the Parking Operations Manager shall temporarily indicate to drivers that the lot is full and to use available on-street parking; and
7. The Parking Operations Manager shall maintain adequate traffic control devices (e.g., pavement markings and signs) and inform ownership when replacement of the same is required;

THAT the parking operations manager shall actively prevent double parking in front of the UG 4 ambulatory diagnostic or healthcare facility;

THAT the residential buildings on the site shall be

fully sprinklered;

THAT substantial construction with respect to the variance (BSA Cal. No. 224-14-BZ) be completed pursuant to Z.R. § 72-23, and all DOB and related agency application(s) filed in connection with the roadway proposed to be located in the bed of Victory Boulevard (BSA Cal. No. 225-14-A) shall be signed off by DOB and all other relevant agencies, by January 30, 2026;

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

THAT certificates of occupancy, also indicating these approvals and calendar numbers (“BSA Cal. Nos. 244-14-BZ and 225-14-A”), shall be obtained within four years, by January 30, 2026;

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 28, 2022.

258-15-BZ

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application July 21, 2021 – Extension of Time of a previously approved Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building which expired on July 25, 2021. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16th Street, Block 7460, Lot 0096, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and an extension of time to obtain a certificate of occupancy for a special permit granted pursuant to Z.R. § 73-44, which expired on July 25, 2021 and permitted a reduction in the number of required accessory off-street parking spaces from 29 to 14 at an existing building, contrary to Z.R. § 36-21.

A public hearing was held on this application on January 11, 2022, after due notice by publication in *The City*

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Record, and then to decision on January 26, 2022.

The Premises are located on the east side of East 16th Street, between Avenue Z and Sheepshead Bay Road, within a C4-2 zoning district, in Brooklyn. With approximately 25 feet of frontage along East 16th Avenue, 100 feet of depth, and 2,500 square feet of lot area, the Premises are currently occupied by an existing, two-and-a-half story, with attic and basement, residence.

The Board has exercised jurisdiction over the Premises since July 25, 2017, when, under the subject calendar number, the Board granted a special permit, under Z.R. §§ 73-44 and 73-03 to permit, in a C4-2 zoning district, a reduction in the required number of accessory parking spaces for an ambulatory diagnostic or treatment facility in Use Group (“UG”) 4 and UG 6 offices in parking requirement category B1, contrary to Z.R. § 36-21, on condition that all work substantially conform to drawings filed with the application; any change in ownership or operation require prior approval from the Board in order to examine whether the parking demand has changed from four parking spaces because the parking study considered by the Board was based on the current operation of the existing medical facility wherein the subject site operates as a radiation and management practice only in tandem with its principal practice at 2632 East 14th Street, Brooklyn; the certificate of occupancy issued for the building within which the UG 4 ambulatory diagnostic or treatment facility and UG 6 offices are located state that no certificate thereafter be issued if the UG 4 ambulatory diagnostic or treatment facility or UG 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 within the permitted off-site radius; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by July 25, 2021; the approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approval be considered approved only for the portions related to the specific relief granted; and the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The time to complete construction and obtain a certificate of occupancy having expired, the applicant now seeks an extension. Since the Board’s initial approval, the applicant states that it has not commenced construction, citing an inability to secure financing as the reason for the delay. In this application, the applicant represented that it had recently secured funding and is now able commence construction of the proposed project.

At hearing, the Board raised concerns regarding movement on the project within the four years since the prior BSA approval. In response, the applicant submitted DOB approved drawings for the project and a construction timeline with the proposed start and anticipated completion date for the proposed project.

The Board notes that this Z.R. § 73-44 approval is a rare case in which it does not object to the applicant seeking a DOB waiver for the remaining required parking spaces. First, the Board notes that because of the subject site’s lot size of 25 square feet by 100 square feet, the building is physically unable to provide on-site parking. Secondly, the Board considered the parking study, which reveals a demand of only four parking spaces that could be met by ample on-street parking availability. Finally, and most importantly, the Board declares that the proposed use would be a radiation and management practice to be used in tandem with a related medical practice down the street, therefore, parking demand for the subject site is limited to staff needs rather than patient trips.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and to obtain the certificate of occupancy for the special permit 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 July 25, 2017, so that as amended, this portion of the resolution shall read: “to extend the time to complete construction and obtain a certificate of occupancy for four years, to expire on February 28, 2026, *on condition*:

THAT any change in ownership or operation shall require prior approval from the Board in order to examine whether the parking demand has changed from four parking spaces because the parking study considered by the Board was based on the current operation of the existing medical facility wherein the subject site operates as a radiation and management practice only in tandem with its principal practice at 2632 East 14th Street, Brooklyn;

THAT the certificate of occupancy issued for the building within which the UG 4 ambulatory diagnostic or treatment facility and UG 6 offices are located shall state that no certificate shall thereafter be issued if the UG 4 ambulatory diagnostic or treatment facility or UG 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 within the permitted off-site radius;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, within four years, by February 28, 2026;

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.258-15-BZ’), shall be obtained within four years by February 28, 2026;

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

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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, February 28, 2022.

2017-243-BZII

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

SUBJECT – Application July 13, 2021 – Extension of Time to Obtain a CO of a previously approved variance permitting the operation of an automotive service station with accessory uses which expired on October 29, 2020; Waiver of the Board’s Rules of Practice and Procedures. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard, aka 29-29 172nd Street, Block 4938, Lot 1 Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
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 obtain a certificate of occupancy for an automotive service establishment (Use Group (“UG”) 16) with accessory convenience store, which expired on October 29, 2020.

A public hearing was held on this application on November 30, 2021, after due notice by publication in *The City Record*, and then to decision on February 28, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area.

The Premises are a triangular lot located on the west side of Francis Lewis Boulevard and east side of 172nd Street, within an R2A zoning district, in Queens. With approximately 273 feet of frontage along Francis Lewis Boulevard, 183 feet of frontage along 172nd Street, and 13,801 square feet of lot area, the Premises are occupied by an automotive service station (UG 16) with one-story accessory building (3,700 square feet of floor area) and eight accessory off-street parking spaces.

The Board has exercised jurisdiction over the Premises since December 5, 1950, when, under BSA Cal. No. 212-50-BZ, the Board granted a variance, for a term of 15 years, to permit the Premises to be occupied as a store, auto showroom for new and used cars, motor vehicle repairs, wheel alignment and service, lubricatorium, car washing, salesroom and parts department, and gasoline service station, on condition that the proposed auto showroom, gasoline service station and single-family residence be constructed at one time; the front yard width of 40 feet for

the full depth from 172nd Street to Francis Lewis Boulevard be occupied solely by a one-family residence and be set back from 172nd Street equal to the set back of the adjoining houses; the residence be in keeping as to design and construction with such adjacent homes; the portion of the plot adjoining such 40 feet along 172nd Street within the residence use area not be occupied as a portion of the gasoline station construction but be kept planted and made available for use with the proposed one-family residence; the balance of the plot may be constructed for the uses as proposed in “Scheme A” plan; there be no openings or curb cuts to 172nd Street; the accessory building and showroom be of the design proposed on revised plans filed with “Scheme A” and be constructed of face brick throughout and be arranged as indicated and in all other respects comply with all laws, rules, and regulations applicable thereto; the boiler room be separated from the balance of the building by fireproof construction and entered only from the exterior; along the 172nd Street building line and returning to Francis Lewis Boulevard, as shown, there be constructed a brick masonry wall properly coped and to a height of not less than 5'-6"; the number of gasoline storage tanks not exceed eight 550-gallon tanks; the pumps be of the approved low parkway design and erected not nearer than ten feet from their base to the street building line of Francis Lewis Boulevard; curb cuts be restricted to three, as indicated, none wider than 30 feet; at the intersection of 172nd Street and Francis Lewis Boulevard there be a planted area, as indicated, properly protected with curbing and planted with material as may be approved by the Department of Parks; sidewalks and curbing on the streets adjoining the Premises be constructed to the satisfaction of the Borough President; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; the balance of the plot where not occupied by the proposed one-family residence, landscaping, accessory building, pumps and walls be surfaced with concrete or bituminous paving; signs be restricted to permitted signs within the business use area, except for the portion of the plot to be occupied for residence, and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs, but permitting the erection within the building line near the intersection of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not over four feet; such sign be located southerly of the cross-wall from 172nd Street to Francis Lewis Boulevard; minor repairs with hand tools only may be permitted within the accessory building; any openings facing 172nd Street be filled with glass blocks as approved for exterior walls; there be no opening along the rear of the accessory building to the adjoining portion of the Premises where the one-family residence is to be constructed; complete working drawings be submitted for consideration by the Board before same are filed with the Borough Superintendent; such plans be filed within three months, by March 5, 1951; after approval of such plans, all permits required be obtained and all work completed within

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one year thereafter.

On January 23, 1951, under BSA Cal. No. 212-50-BZ, the Board approved plans as being in substantial compliance with the 1950 resolution, with the further requirement that the design for the proposed one-family residence be filed with the Board for consideration and approval under the terms of the resolution.

On July 10, 1951, under BSA Cal. No. 212-50-BZ, the Board amended the resolution such that the cross wall near the intersection of 172nd Street and Francis Lewis Boulevard may be stepped down to heights as indicated on revised plans filed with the application on condition that such wall be of brick as previously required and properly coped, in all other respects the resolution be complied with.

On April 12, 1955, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution such that in the event the owner has complied with the requirements of the resolution and constructed a residence on 172nd Street adjoining the proposed gasoline service station and desires to sell such residence, nothing therein contained interfere with such sale on condition that the stipulations in the deed of sale require that the residence be continued under the requirements of the resolution adopted by the Board under BSA Cal. No. 212-50-BZ.

On July 8, 1958, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to record a new owner and to permit new gasoline pumps of a low approved type in place of the parkway type pumps on condition that in all other respects the resolution be complied with.

On January 7, 1964, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution such that the easterly portion of the building may be used for a retail store as permitted in UG 6, substantially as shown on revised drawings filed with the application, on condition that the milk and ice machines be removed from the Premises and other than as amended the resolution be complied with in all respects.

On July 16, 1968, under BSA Cal. No. 212-50-BZ, the Board waived its Rules of Procedure and further amended the resolution to extend the term for ten years, to expire on December 5, 1975, and to permit a total of 12 550-gallon approved gasoline storage tanks and two pump islands with three approved pumps on each island, substantially as shown on revised drawings submitted with the application, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained.

On December 16, 1975, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to extend the term for ten years, to expire on December 16, 1985, on condition that the sidewalks in front of the Premises along Francis Lewis Boulevard and a long 172nd Street be paved for their full width in accordance with the rules and regulations of the Department of Highways; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On February 4, 1986, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to extend the term

for ten years, to expire on December 16, 1995, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by February 4, 1987.

On June 25, 1995, under BSA Cal. No. 212-50-BZ, the Board further amended the resolution to permit the elimination of the retail store located on the zoning lot by reducing the size of the existing accessory canopy over four new concrete pump islands and the relocation of two curb cuts and extended the term for ten years, to expire on December 16, 2005, on condition that the northernmost pump be closed after 10:00 p.m.; there be no sales of used cars or automatic car washing; the loudspeaker system be turned down after 10:00 p.m.; signs be posted advising patrons to "turn off car radios;" the Premises remain graffiti-free; signs be in accordance with BSA-approved plans; all area lights be directed downward and away from adjacent residential uses; street trees be planted in accordance with BSA-approved plans; two new curb cuts on Francis Lewis Boulevard be installed in accordance with BSA-approved plans and the curbs restored at the location of the curb cuts previously approved by the Board; the Premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, substantial construction be completed and a new certificate of occupancy be obtained within one year, by July 25, 1996.

On November 29, 2005, under BSA Cal. No. 212-50-BZ, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term for ten years, to expire on December 16, 2015, on condition that the use substantially conform to drawings filed with the application; all graffiti on site be removed; all landscaping be installed and/or maintained as shown on the BSA-approved plans; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived remain in effect; all signage comply with applicable C1 district regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all other applicable provisions of the Zoning 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 29, 2019, under the subject calendar number, the Board waived its Rules of Practice and Procedures and reinstated the variance, under Z.R. § 11-411, previously granted under BSA Cal. No. 212-50-BZ, to permit an extension of term of ten years, expiring December 16, 2025, and to legalize the conversion of the accessory building to an accessory convenience store, on condition that all work and site conditions substantially conform to drawings filed with the application; the term of the variance expire on December 16, 2025; the landscaping and asphalt

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be repaired or replaced, as shown on BSA-approved plans, to be maintained in first-rate condition; lighting be directed down and away from nearby residential uses, as shown on BSA-approved plans; signage comply with BSA-approved plans; the trash be stored in an enclosure, as shown on BSA-approved plans; there be no sale of products outside of the accessory building; there be no storage of hazardous materials on site; there be no tires stored outside of the accessory building; the site be maintained clean and free of debris and graffiti; the conditions appear on the certificate of occupancy; all conditions not specifically waived by the Board remain in effect; a certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 2017-243-BZ”), be obtained within one year, by October 29, 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 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 have obtained a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than 30 days since the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application.

By letter dated November 22, 2021, the Fire Department states that the Bureau of Fire Prevention has reviewed the application and its records and find that the automotive service station and repair shop is current (last inspection performed on March 2nd, 2021) with their Fire Department permits concerning the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry-chemical) system. Based upon the foregoing, the Fire 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 applicant represents that the Premises continue to comply with all conditions of the Board’s resolution, with the exception of pandemic-related delays in obtaining a certificate of occupancy. Additionally, the applicant submits an operational plan, stating that the Premises’ automotive service station and accessory convenience store operate 24 hours per day, 7 days per week; the repair shop operates Monday through Saturday, 7:00 a.m. to 6:00 p.m., and is closed on Sunday. The applicant further represents that security cameras on the building monitor the entirety of the Premises and function 24 hours a day, 7 days a week. In addition, the applicant states that the security camera system would be utilized to view customer vehicles via a closed-

circuit television monitor in the attendant area so that customers can be observed. The applicant declares that an attendant would monitor both the property and the sidewalk during normal business hours to ensure vehicles visiting the station and repair shop only park within the Premises in designated parking stalls and not on the sidewalk. The applicant states that if vehicles are observed parking on the sidewalk, the vehicle owner would be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e. side street) until such time an on-site parking stall becomes available. Moreover, the owner of the site would monitor the site and notify operators to remove items, including tires, if items are observed being sold outside and will ask that they be placed inside the building.

At hearing, the Board noted that the existing conditions and plans for the subject site vary from the BSA-approved plans. As this application is for an extension of time to obtain a certificate of occupancy, the Board did not accept new plan submissions, however, it did clarify that there is a slight modification from the BSA-approved plans. Specifically, the Board notes that the existing trash enclosure at the site is a six-foot high, chain link fence enclosure with privacy slats measuring 4.2 feet deep by 15 feet wide with double swing gates for access, contrary to approved plans that depict a masonry trash enclosure. Additionally, the Board states that the signage was updated to detail the freestanding price sign as illuminated, whereas this sign was called out as non-illuminated on the BSA-approved plans. The Board notes that there is 50 square feet of illuminated signage and 0 square feet of illuminated signage on Francis Lewis Boulevard and 42 square feet of illuminated signage and 0 square feet of non-illuminated signage on 172nd Street. The Board states that all signage complies with C1 zoning district regulations, where 50 square feet of illuminated signage is permitted and 150 square feet of nonilluminated signage is permitted.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated October 29, 2019, so that as amended this portion of the resolution shall read: “to grant a two-year extension of time to obtain a certificate of occupancy, to expire on February 28, 2024; *on condition*:

THAT the term of the variance shall expire on December 16, 2025;

THAT the landscaping and asphalt shall be repaired or replaced, as shown on BSA-approved plans to be maintained in first-rate condition;

THAT lighting shall be directed down and away from nearby residential uses, as shown on BSA-approved plans;

THAT the hours of operation shall be limited to 24 hours a day, 7 days a week for the automotive service station and accessory convenience store and to 7 a.m. to 6

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p.m., Monday to Saturday, and closed on Sunday for the repair shop;

THAT signage at the site shall be 50 square feet of illuminated signage and 0 square feet of illuminated signage on Francis Lewis Boulevard and 42 square feet of illuminated signage and 0 square feet of non-illuminated signage on 172nd Street;

THAT the trash shall be stored in the trash enclosure, which is a six-foot high, chain link fence enclosure with privacy slats measuring 4.2 feet deep by 15 feet wide with double swing gates for access, contrary to BSA-approved plans that show a masonry trash enclosure;

THAT the chain link fence with slatting trash enclosure shall be repaired and replaced as needed;

THAT there shall be no sale of products outside of the accessory building;

THAT there shall be no storage of hazardous materials on site;

THAT there shall be no tires stored outside of the accessory building;

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

THAT there shall be no cars parked on the sidewalk;

THAT an attendant shall monitor both the property and the sidewalk during normal business hours to ensure vehicles visiting the station and repair shop will only park on site in designated parking stalls and not on the sidewalk. If vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e. side street) until such time an on-site parking stall becomes available;

THAT the owner, in addition to the operator of the site, shall monitor the site and notify operators to remove items, including tires, if it observed items being sold outside;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2017-243-BZ”), shall be obtained within two years, by February 28, 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 28, 2022.

360-49-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilts Petroleum Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on May 2, 2006; Waiver of the Board’s Rules. R4-1 zoning district.

PREMISES AFFECTED –69-05 Eliot Avenue, Block 2838, Lot 38, Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

887-54-BZIV

APPLICANT – Eric Palatnik, P.C. for Napa Realty Corp., owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued use of gasoline station (BP Amoco) with accessory convenience store which expires on June 15, 2020. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

808-55-BZ

APPLICANT – Eric Palatnik, P.C. for 35 Bell Realty Inc., owner.

SUBJECT – Application September 29, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on March 27, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, Block 6169, Lot 6, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

827-55-BZIII

APPLICANT – Eric Palatnik, P.C. for Spartan Petroleum Corp., owner.

SUBJECT – Application July 15, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which is set to expire on January 31, 2021. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, Block 1361, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

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663-63-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Dorp Baptiste Church, Inc., owner.

SUBJECT – Application July 26, 2019 – Amendment of previously approved Special Permits (§§ 73-452 & 73-641). The amendment seeks the proposed enlargement of an existing house of worship (UG 4) (New Dorp Baptist Church) and school (UG 3) (New Dorp Baptist Academy). R3X zoning district.

PREMISES AFFECTED – 46 10th Street, Block 4220, Lot 0029, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for continued hearing.

548-69-BZIV

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

SUBJECT – Application July 29, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expires on May 25, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on June 6, 2018; Waiver of the Board’s Rules of Practice and Procedures. C2-3/R6B zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

742-70-BZIII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 830 Bay Street Holding LLC, owner.

SUBJECT – Application March 23, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expires May 18, 2021; Amendment to permit a change of use from Automotive Service Station (UG 16B) to Automotive Repair Facility (UG 16B). C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, Block 2836, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for decision, hearing closed.

435-74-BZ

APPLICANT – Eric Palatnik, P.C., for Theresa Townsley, owner.

SUBJECT – Application January 22, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expired on January 14, 2020. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, Block 3804, Lot 18, Borough of Queens.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

584-82-BZ

APPLICANT – Sheldon Lobel, P.C., for 64th Street Third Avenue Associates, LLC, owner.

SUBJECT – Application August 15, 2020 – Amendment of a previously approved Variance (§72-21) permitting the construction of a required plaza at a height in excess of 5 feet above the curb level. The seeks modifications to the layout of a Privately Owned Public Space (“POPS”). R8B and C1-9 zoning districts.

PREMISES AFFECTED – 200 East 64th Street, Block 1418, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

290-99-BZIV

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Almi Greenwich Associates LLC, owner; Equinox Greenwich Avenue, Inc., lessee.

SUBJECT – Application December 13, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of a physical cultural establishment (Equinox) which expires on March 28, 2020. C1-6/R6 zoning district.

PREMISES AFFECTED – 97 Greenwich Avenue, Block 615, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for decision, hearing closed.

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111-01-BZ

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC., owner; Briad Wencoco LLC, lessee.

SUBJECT – Application April 28, 2021 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy's) which expired February 2, 2021; Amendment requesting a change in hours of operation contrary to the previous board approval; Waiver of the Rules. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Block 810, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10:00 A.M. for continued hearing.

215-06-BZIV

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; BP Products North America Inc. lessee.

SUBJECT – Application September 30, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on July 21, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board's Rules. R5B zoning district.

PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

226-10-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orb Management Ltd., owner; Equinox Hudson Street, Inc., lessee.

SUBJECT – Application January 29, 2021 – Extension of Term of a previously approved Special Permit (§73-36) permitting a Physical Culture Establishment (Equinox Fitness) on the first, ninth and tenth floors of an existing 10-

story mixed-use building which expired on January 1, 2021. M1-5 zoning district.

PREMISES AFFECTED – 421 Hudson Street, Block 601, Lot 750, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to PCE for postponed hearing.

227-10-BZIII

APPLICANT – Eric Palatnik, P.C, for Power Test Realty Corporation, owner.

SUBJECT – Application June 12, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) to expire on September 20, 2021. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for adjourned hearing.

2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner

SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow the development of a commercial building which expired on June 20, 2021, Waiver of the Board's Rules of Practice and Procedures. C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10:00 A.M. for postponed hearing.

2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved General City Law § 35 waiver to construct a two-story mixed-use commercial and residential building within the bed of a mapped street which expires on July 25, 2021. C1-3/R4 Special Hillside Preservation District.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 11-

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12, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

APPEALS CALENDAR

2018-188-A & 2018-189-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

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10:00 A.M. for adjourned hearing.

CORRECTION: This resolution adopted on February 28, 2022, under Calendar No. 2019-66-BZ, is hereby corrected to read as follows:

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 – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 11, 2019, acting on New Building Application No. 121189061, reads in pertinent part:

1. ZR 42-00: Proposed residential building use group 2 is not permitted as-of-right in an M1-1 zoning district as per ZR Section 42-00 and therefore requires a variance from the Board of Standards and Appeals pursuant to Section 72-21.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an M1-1 zoning district, the development of a five-story, 24-unit residential building, contrary to Z.R. § 42-00.

A public hearing was held on this application on August 25, 2020, after due notice by publication in *The City Record*, with continued hearings on March 9, 2021, November 16, 2021, and January 15, 2022, and then to decision on February 28, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and the surrounding neighborhood. Community Board 8, the Bronx, 1 recommends denial of this application stating in regard to the applicant’s initial proposal:

Terrace View Avenue is a narrow street providing one of two entranceways to the Marble Hill community. It is a one-way street that, given parking one side and prevalent illegal parking on the other, supports only tight passageway for motor vehicles and questionable passageway and clearance for trucks and other large vehicles when illegal parking is present. It cannot provide access for, let alone, facilitate construction equipment

1 Although the premises are located on New York State’s mainland, not on Manhattan Island, it is still within the political jurisdiction of Manhattan and Community Board 8, the Bronx.

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and vehicles for the proposed construction phase of this project without impeding all emergency and other vehicles.

The traffic problem is exacerbated by applicant's stated intention not to provide any parking at all for the proposed 59 residential units. The area is already parking starved, with parking on the sidewalks a frequent event. Indeed, with the advent of congestion pricing, it can readily be established that the parking problem will be exacerbated on both sides of the Premises by non-residents parking in order to use the nearby Metro North facility or subway service to downtown Manhattan (commercial off-street parking being at a minimum).

While owners of the applicant LLC represent it can develop a construction plan using the U-Haul site (at the bottom of the hill) to minimize the traffic issues noted above, it also admits that it does not have any binding arrangement with U-Haul to that end (assuming that use would be permissible).

The proposed structure would, by reason of height, bulk, and character, materially alter the essential character of the zoning district in which the proposed residential high rise would be located. On the Terrace View Avenue side and in the immediately surrounding area one- and two-family residences abound. To the north, essentially down the hill, structures within the contemplation of a manufacturing district abound (e.g., a U-Haul facility, gas and automobile repair facilities, a bank, and an educational complex). Indeed, given both the shortage of legal parking and the proximity of mass transit, the site could well accommodate a parking facility. Indeed, the absence of parking was a significant factor in the rejection of a nearby facility proposed by a hospital.

After the applicant revised its submission, Community Board 8, the Bronx, recommended denial of the application stating:

While that failure to provide Board 8 with the requisite information upon which to review and comment upon this revision has precluded the in-depth analysis that we prefer, several facts are clear that, in our view, militate against grant of the application. In sum, the revision does little to cure the defects of the former submission.

1. Serious disruption of the principal automobile entranceway to the Marble Hill area remains wholly unaddressed. We have previously provided photographic evidence showing the narrowness of Terrace View Avenue and the extreme difficulty that now exists in keeping that road way clear for both emergency traffic and regular automobile traffic. The only evidence offered of a

supposed solution to the problem is the assertion by an interested and obviously biased principal of the owner-applicant. In the Chair of Board 8's Land Use Committee's view, the applicant's claimed solutions will, as a realistic matter, not provide a meaningful solution or relief, bearing mind that (a) this is the principal vehicular entranceway to the residences and businesses of literally thousands of Marble residents and a construction blockage will effectively shut down that area for many of its residents and businesses and (b) is based on pure speculation (to illustrate, they admit that they have not even commenced negotiations with the U-Haul property owners let alone any construction entity that can and will provide written assurances that they can execute on the rank speculation) The latter point is particularly important. It was pointed out in the prior proceedings as a fatal flaw and no effort has been made (and perhaps cannot be made) to fill that void.

2. We have previously pointed out that parking is today and will obviously increasingly be a problem in that area. The same lame responses as now are tendered were previously offered by the applicant. They are no less inadequate now. Indeed, they may well be more serious. The Land Use Chair notes that as Congestion Pricing looms ever larger and more immediate as a reality, this area of Marble Hill is one long viewed as a serious candidate for Westchester and Upstate residents to park their cars and trek to Metro North or other mass transit in the anticipated effort to avoid Congestion Pricing charges. The Marble Hill community of single family homes and low rise multiple dwellings needs no additional challenge such as here would be offered.
3. The remaining arguments of our initial opposition remain largely unanswered.

The Board received five form letters of objection to this application, citing concerns about the lack of parking, and potentials for increased congestion and traffic, harm to current wildlife, increased trash accumulation, changes to the neighborhood character, and lack of services and infrastructure for the scale of the proposed development.

I.

The Premises are located on the north side of Terrace View Avenue, between Teunissen Place and Adrian Avenue, within an M1-1 zoning district, in Manhattan. With approximately 108 feet of frontage along Terrace View Avenue, 70 feet of depth, and 8,175 square feet of lot area, the Premises are currently vacant.

II.

Originally, the applicant sought to construct a seven-

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story, 113-foot tall, 39,272.8 square foot (4.67 FAR) residential building with 59 rental units at the property. The applicant stated that the proposed building would rise to a total height of 113'-0", plus a 20'-0" bulkhead. The applicant represented the proposed project would adhere to the rest of the underlying bulk requirements of the M1-1 zoning district, including a rear yard with a depth of 20'-0" as per the shallow interior lot provisions of Z.R. § 23-52, and there would be no parking. The applicant further stated the building's cellar would contain three apartments and a gym with accessory storage space for the building. Furthermore, the applicant described that the ground floor would contain eight apartments and a residential lobby; and the second through seventh floors would each contain eight apartments. The applicant declared the unit mix of the building would be as follows: 10 studio apartments, 35 one-bedroom apartments, and 14 two-bedroom apartments.

Over the course of hearings, the Board questioned whether the applicant's claimed hardship of a steep slope, a common attribute in the Marble Hill Neighborhood, justified both a use waiver to permit residential use and an additional FAR bulk waiver, which was proposed four times higher than the allowable 1.25 FAR and twice the allowable height in the adjacent R5 zoning district, and does not provide any parking with a 20-foot rear yard. The Board further elaborated on the how the proposed height of the building did not fall in line with the existing neighborhood character as it towered over the neighboring buildings, further making it difficult to justify the applicant's hardship or minimum variance arguments. The Board suggested that the applicant revise its proposal to adhere to the Quality Housing bulk regulation for the adjacent R6 zoning district, as per Z.R. § 23-011.

Now, the applicant proposes to construct a five-story, 55-foot tall, 17,887 square foot (2.179 FAR) residential building containing 24 rental units. The applicant represents that the proposed project would follow the Quality Housing regulations for the R6 zoning district with a total height 55'-0", plus an approximately 22'-0" roof and bulkhead. The applicant states that the Premises would have a rear yard with a depth of 20'-0", and a side yard measuring 8'-0", as per Z.R. § 23-462. The applicant describes that the building's cellar would comprise of a gym, recreation room, and accessory storage space for the building; the ground floor would contain an elevator, lounge area, and residential lobby, 16 parking spaces, including 2 accessible spaces; the second through fourth floors would each contain seven apartments at each floor; the fifth floor would contain three apartments, two private terraces, and a mechanical equipment area. The applicant represents that the unit mix of the building would be as follows: 3 studio apartments, 13 one-bedroom apartments, and 8 two-bedroom apartments.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its small lot size, a narrow lot depth, and frontage on a narrow street—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. First, the applicant represents that the Premises is unviable as a potential commercial or manufacturing property because it does not provide enough space to accommodate the truck deliveries and significant storage area that these uses would require. Specifically, the applicant states that the lot's 70'-0" depth would necessarily result in a building that had to give up its width to a truck loading area, since with a lot area of 8,207.2 square feet, there would not be enough room on the lot to compensate for this loss in available space. The applicant concludes that the small size and depth of the lot would therefore render it inadequate for either a commercial or manufacturing use.

Second, the applicant points to the Premises' sole frontage on a narrow at 50'-0" wide, predominantly residential one-way street, which, together with the minimal lot size and depth, makes it even less desirable as a potential site for a commercial or manufacturing space. Moreover, the applicant states that due to regularly scheduled deliveries, the use would generate a significant increase in traffic that would pose a burden to the residential neighbors. In support of this contention, the applicant submitted an additional area map, which analyzes sites in the commercial and manufacturing districts within a 1,000-foot radius of the Premises. The map demonstrated that there are nine lots with lot areas similar to that of the Premises, with three sites in the subject M1-1 zoning district and six sites in the nearby C8-1 zoning district. Of the lots in the M1-1 district, two (22%) are already improved upon with residential uses. Of the six lots in the C8-1 zoning district, three (33%) are owned in common ownership with adjoining lots. Of the three (33%) remaining lots, each had been previously associated with one another.

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.

B.

Next, the applicant submits that in the absence of the grant of the variance requested in this application, it would not be possible for the subject Premises to provide a reasonable return on investment. The applicant submitted the plans for an as-of-right, one-story, industrial building with a mezzanine and a cellar that would contain 8,088.8 square feet of zoning floor area and would rise to a height of 20'-0"; the main floor would have 7,407.8 square feet of floor area and would serve as a commercial warehouse; and the mezzanine level would contain 681 square feet of floor area and would be occupied by an office space. This plan assumed a waiver of the Z.R. § 43-304 front yard requirement, and, as such, would contain no yards.

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Additionally, the applicant submitted a Financial Feasibility Study which demonstrated that the project cost for the as-of-right scenario would be \$5,390,429, with a project value of \$4,573,494, resulting in a -9.6% loss on investment. Additionally, the applicant submitted as-of-right plans for a one-story, industrial building with mezzanine, cellar and subcellar that would contain 8,161.9 square feet of floor area, with 7,407.8 square feet at the main floor and 754.1 square feet at the mezzanine level. The plans demonstrate that this as-of-right building would rise to 20'-0" and would also assume a waiver of the Z.R. § 43-304 front yard requirement, resulting in a development without any yards. As shown in the applicant's Financial Feasibility Study, the project cost for this scenario would amount to \$5,921,269, with a project value of \$4,714,595, resulting in a -9.4% loss on investment. Finally, the applicant submitted the plans for a parking garage with a cellar that would contain 7,484.2 square feet of zoning floor area with 51 parking spaces. The building would rise to 21'-0" and would contain no yards. The Financial Feasibility Study demonstrated that the project would cost \$5,070,331 and have a value of only \$432,831, resulting in a -52.3% loss on investment.

The applicant also submitted a supplemental financial feasibility report showing that the proposed project of a five-story, 24-unit residential building has a total value is \$9,986,216, with a total development cost of \$9,705,108 and a reasonable return. The proposed development scenario provides for a return on project of 1.3%. Accordingly, the Board finds that because of the unique physical condition at the subject Premises, there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the Zoning Resolution would bring a reasonable return.

C.

The applicant further 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. Moreover, the applicant states that the proposed project would be far more appropriate to the context of the neighborhood than would a conforming development. The applicant represents that the subject M1-1 zoning district is devoted almost entirely to a large manufacturing use, along with two small residential lots and one commercial property that neighbor the Premises to the east. The applicant describes the manufacturing use, a U-Haul facility located at 127 Marble Hill Avenue (Block 2215, Lot 89), which contains approximately 185,000 square feet of lot area, a height of approximately 89'-0", and 1.71 FAR. The applicant further represents that north of the subject site at 230 West 230th Street (Block 5710, Lot 700) is a parking lot for the U-Haul facility, with 72,550 square foot of lot area (0.03 FAR), and a height of 13.88'. The applicant states that to the east of the Premises are 5 Terrace View Avenue (Block 2215, Lot 179) and 3 Terrace View Avenue (Block 2215, Lot 180), both of which are two-family homes with approximately 3,938 square foot of lot area (0.57 FAR), and each rising to a height of approximately 47'-0". The

applicant represents that 1 Terrace View Avenue (Block 2215, Lot 181) is a commercial building, with 2,412 square foot lot area (1.65 FAR), and a height of approximately 35'-0".

Furthermore, the applicant points out that across the street from the Premises is an R5 zoning district that covers the top of Marble Hill. Within that zoning district, residential uses are permitted to a maximum of FAR of 1.25 (Z.R. § 24-11), and community facility uses are permitted to a maximum of FAR of 2.0 (Z.R. § 24-111), with a 40'-0" height limitation (Z.R. § 23-60). Additionally, the applicant states that east of the Premises is an R6 zoning district that allows for residential use up to 2.43 FAR (Z.R. § 24-11), and community facility use up to 4.8 FAR (Z.R. § 24-11), with building height governed by sky exposure plane (Z.R. § 23-60). Quality Housing buildings in the R6 zoning district are restricted to an FAR of 2.2 and a height of 55'-0", see, generally, Z.R. § 28-01. 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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that although the three historical lots that comprise the Premises have been in single ownership, they have never been owned in conjunction with any of the other adjoining lots. In support of this contention, the applicant submitted the chain of title which shows that two of the lots that comprise the zoning lot (Lots 173 and 175) have been owned by different entities, but have been in common ownership since 1966, whereas Lot 177 was joined into the single ownership in 1986 and has remained so ever 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.

E.

The applicant notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that the requested use waiver would enable the applicant to overcome the stated hardship unique to the Premises and represents that the proposed building is the minimum necessary to overcome these hardships. 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.

By letter dated November 10, 2021, the Fire Department, Bureau of Fire Prevention states that it has reviewed the application and notes that the revised plans show Fire Department access to rooftops at the proposed new buildings and find same to be acceptable in compliance with the 2014 Fire Code, Section 504.4. Based on the foregoing, the Fire Department has no objection to this application.

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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 EAS CEQR No. 19BSA112M, dated February 28, 2022. 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 letter dated September 14, 2020, the New York City Department of Environmental Protection (“DEP”) Bureau of Sustainability has reviewed the August 2020 material, and, based on its review of the submitted documentation, has the following comments and recommendations to BSA:

Based on prior on-site and/or surrounding area land uses which could result in environmental contamination and testing is not possible during the CEQR process given the current economic climate as a result of COVID Pandemic, DEP concurs with BSA that an (E) Designation for hazardous materials should be placed on the zoning map pursuant to Section 11-15 of the New York City Zoning Resolution for the subject property. The (E) Designation will ensure that testing and mitigation will be provided as necessary before any future development and/or soil disturbance. Further hazardous materials assessments should be coordinated through the Mayor’s Office of Environmental Remediation.

By letter dated October 23, 2020, DEP, Bureau of Environmental Planning and Analysis has reviewed the September 23, 2020 request for the Noise section prepared on behalf of the applicant for the proposed project. DEP has reviewed the noise sections for the proposed projection:

Noise:

Based on the results of the Noise analysis performed as per the CEQR Technical Manual, it was determined that the proposed project would not result in significant adverse impact for noise. The assessment includes the noise from mobile and stationary sources such as traffic and rail/train sources.

V.

Over the course of the hearings, the Board requested that the submitted plans be revised to include a compliance chart for the Quality Housing Regulations and demonstrate the dimensions for the setbacks at the fifth floor, a reduced elevator bulkhead, a deduction chart for each floor, and a note referencing the E-designation. Additionally, the Board requested a revised uniqueness study which clarified the relationship between adjacent lots as necessary for the Z.R.

§ 72-21 (a) and (d) analysis. In response, the applicant submitted revised plans which demonstrated a reduced elevator bulkhead by using a machine room-less elevator and a revised uniqueness study for lots within the study area that are owned in common, clarifying how lots are related to adjacent lots.

However, the Board notes that lot area is not what is driving the hardship in this application. Specifically, the Board states that the hardship at the subject site is that this M1-1 zoning district is oddly configured and isolated; the portion where the Premises are located is isolated; and the entire M1-1 zoning district is subdivided by a steep slope that makes it impossible to join one side of the zoning district to the other side in order to assemble a larger parcel that can be accessed from Terrace View. The Board elaborates that because the small M1-1 zoning district is on the hill and the other portion down on the hill, one side is inaccessible to the other. Furthermore, the Board states that the upper portion of the subject district is particularly challenging for manufacturing uses because it is bisected by two existing residential buildings, which further isolates the Premises within an isolated portion of the M1-1 zoning district with the only access point being Terrace View.

In regards to the Premises, the Board states that its 70 foot depth does pose a problem for an as-of-right use in this zoning district in this particular location because of the required 20 foot front yard due to the Premises’ adjacency to a residence district boundary line as per Z.R. § 43-304, which would reduce the allowable building footprint to a 50 foot depth at the first floor and force a two-story building to have a required 20 foot rear yard in order to use all of its floor area, leaving a second floor footprint depth of 30 feet. The Board notes that this configuration is odd for any viable commercial or manufacturing use. Additionally, the Board states that the applicant provided as-of-right drawings which included usable space in the cellar built into the slope to try and overcome the setback requirements, resulting in an impracticable configuration for any viable commercial use. Finally, the Board states that the parking garage requested by the Community Board was found to be impracticable as something that was located too far up in Terrace View to be of desirable use.

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*, the construction of a five-story residential building containing 24 rental units *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received February 22, 2022”—Twenty-one (21) sheets; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-66-BZ”), shall be obtained within four years, by February 28, 2026;

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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, February 28, 2022.

2020-43-BZ

APPLICANT – Law Office of Christopher Wright PLLC, for Zan Optics Products Inc., owner.

SUBJECT – Application May 21, 2020 – 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.

PREMISES AFFECTED – 982 39th Street, Block 5583, Lot 0068, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 18, 2020, acting on Alteration Type 1 Application No. 321848015, reads in pertinent part: “1. ZR 42-00: In M1-2 district, Use Group 2 (Residential) is not permitted as of right.”

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an M1-2 zoning district, the legalization of two residential units on the second and third floors of an existing three-story building, contrary to Z.R. § 42-10.

A public hearing was held on this application on May 25, 2020, after due notice by publication in *The City Record*, with continued hearings on September 14, 2021 and January 11, 2022, and then to decision on February 28, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and the surrounding neighborhood. Community Board 12, Brooklyn, waived its recommendation of this application. The Board received one form letter of objection to this application, citing concerns about increased traffic and congestion in the neighborhood.

I.

The Premises are located on the south side of 39th Street, between New Utrecht Avenue and 10th Avenue, within an M1-2 zoning district, in Brooklyn. With approximately 20 feet of frontage along 39th Street, 95

feet of depth, and 1900 square feet of lot area, the Premises are occupied by a three-story, plus cellar, mixed used commercial and residential building.

II.

The applicant represents that at the Premises, the ground floor contains commercial retail use, and the two upper floors are each occupied by a residential unit. The applicant represents that the subject building was constructed at the same time in the late 1920s as the two buildings abutting it, which both contain two upper floors of residential use and ground floor retail. The applicant seeks to legalize the residential use on the upper floor at the subject Premises, which it represents, lost its eligibility to qualify as a non-conforming residential use due to the enactment of the 1961 Zoning Resolution.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its footprint, which it contends is too small for development as conforming manufacturing use—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 reiterates that the street frontage measures only 20 feet and is insufficient for manufacturing use which require large floor plates, elevators, and loading docks. In support of this contention, the applicant submitted a Uniqueness Study containing the property records of the 176 lots located in the 1,000 foot radius study area. The study demonstrated that of the 176 lots, 84 (48 percent) lots contain residential use. Additionally, the applicant submitted a Land Use Study, which reviewed the applicable land use maps and concluded that the Premises were originally constructed as residential with ground floor retail. The study further details how the upper floors were converted to light commercial use in 1951 and existed at the enactment of the 1961 Zoning Resolution and, therefore, were not eligible to convert back to residential use, as of right.

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.

B.

Next, the applicant submits that in the absence of the grant of the variance requested in this application, it would not be possible for the subject Premises to provide a reasonable return on investment. In support of this contention, the applicant submitted a Financial Feasibility Study, which concludes that the economic viability for a conforming commercial use is -32.8 percent and the project value for the proposed residential use is +0.2%, which the

MINUTES

applicant holds is the minimum necessary to attract a reasonable investor. Accordingly, the Board finds that because of the unique physical condition at the subject Premises, there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the Zoning Resolution would bring a reasonable return.

C.

The applicant further 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 the subject building is located between two similarly configured buildings with ground floor retail and two upper floors occupied by residential use and diagonally opposite to 23 two- to three-story residential buildings, on the corner of 39th Street and 10th Avenue. In support of this contention, the applicant conducted a survey of the blocks and lots on the same side as 39th Street as the subject Premises, from Fort Hamilton to 7th Avenue, which demonstrates that of the 77 lots, 33 (46 percent) contain residential use on the upper floors, and 8 (11 percent) have a ground floor retail use.

Additionally, the applicant described the two recent residential rezoning actions along 39th Street: the area bordered by New Utrecht Avenue, 39th Street, 9th Avenue, and 40th Street was rezoned to R7A in 2018, and the area bordered by 39th Street, 12th Avenue, 37th Street and 14th were rezoned to MX-12 in 2010. The applicant notes that both of these areas now permit residential use. 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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the change emanating from the 1961 Zoning Resolution, as the Premises were occupied by a manufacturing use on the ground floor, with accessory office and storage on the upper floors. The applicant represents that the manufacturing use continued until 2008, when the applicant began leasing the ground floor for retail and started leasing the upper floors for residential use. In support of this contention, the applicant submitted a 1926 Sanborn Map demonstrating that the Premises were originally constructed for residential use, which was the case when the Premises were placed in an M1-2 zoning district in 1961, thereby eliminating the possibility of as-of-right residential reuse of a property originally constructed for residential use. The applicant represents that despite, best efforts, it could not find a viable manufacturing user willing to utilize the entire Premises.

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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that the requested use waiver would enable the applicant to make practical use of the upper two floors of the Premises and to realize a reasonable, but not excessive, rate of return. The applicant represents that because bulk waiver is not being requested nor a use waiver for the ground floor, that this requested variance is the minimum necessary to afford relief. 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 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. 20BSA089K, dated February 28, 2022. 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 letter dated October 6, 2021, the New York City Department of Environmental Protection (“DEP”) has reviewed the September 2021 Remedial Action Work Plan (“RAP”) and the August 2021 Construction Health and Safety Plan (“CHASP”). The September 2021 RAP proposes a thorough cleaning of the cellar floor; installation of a sump cover in the cellar; sealing slab cracks, cut or utility entries in the cellar floor with a non-volatile organic compound caulk and/or foam such as minimum 20-mil Land Science Technologies Retro-Coat Sealer and Gel; as well as inspection and approval of the sealing of the cellar floor. The August 2021 CHASP addresses worker and community health and safety during redevelopment.

Based upon its review of the submitted documentation, DEP has the following comments and recommendations to BSA:

RAP

- BSA should instruct the applicant that the proposed vapor barrier system should be used unless an amendment is approved by DEP.

DEP finds the September 2021 RAP and August 2021 CHASP for the proposed project acceptable, as long as the aforementioned information is incorporated into the RAP. 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.

MINUTES

certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., installation of sump cover, sealing of cellar, etc.).

By letter dated December 30, 2021, NYC DEP, Bureau of Environmental Planning and Analysis states that it had reviewed the Air Quality and Noise chapters of the February 1, 2021 EAS and supporting materials and has the following comments:

Air Quality

Based on the air quality analysis performed, for the proposed project, DEP has concluded that there is no potential for significant adverse impacts from air quality. Based on mobile sources, the project would not result in any mobile sources of pollution and would not significantly increase vehicle miles traveled in a large area. Therefore, the project would not result in significant impacts from mobile sources. Based on stationary sources, the screening analysis for mechanical systems (HVAC) proves that there is no potential for significant impacts from boiler emissions on the surrounding area.

As pertain to industrial sources, the screening analysis performed for emissions sources identified, shows that the predicted concentration of pollutants do not exceed the AGC/SGC values. Additionally, the concentrations of criteria pollutant do not exceed the NAAQS or de minimis guidelines. Therefore, there is no significant adverse air quality impacts from industrial sources. Lastly, there are no major or large sources of emissions within 1,000 feet of the proposed project, therefore there is no potential for significant adverse impacts from major or large sources in the surrounding area. In conclusion, as it pertains to mobile, stationary and industrial sources, there is no significant air quality impacts on the proposed project or on the surrounding area.

Noise

Based on the noise measurements performed, DEP has concluded that there is no potential for significant impacts pertaining to mobile or stationary sources. Project-generated traffic would not double vehicular traffic on nearby roadways, and therefore would not result in a perceptible increase in vehicular noise. Based on ambient noise analysis performed, the highest ambient noise in the area would be 80.5 dBA. The proposed building will, therefore, require a 36 dBA window-wall attenuation to achieve an acceptable interior noise levels. In addition, in-wall air condition units will provide alternate means of ventilation during closed window condition. With these measures in place, there is no significant adverse impacts pertaining to noise.

V.

Over the course of the hearings, the Board expressed concerns about the lack of evidence before it that the Premises were originally constructed for residential use and on the subject building's inability to accommodate industrial uses, the figures used in the applicant's Financial Study, and the applicant's incorporation of the DEP's comments into its plans. In response, the applicant submitted a Land Use Study for the subject Premises and the two abutting properties, which concludes that the Premises were

originally construed in 1926 as residential building with ground floor retail. Furthermore, the applicant revised its Financial Feasibility Study to clarify the existing renovated residential apartments and construction cost estimates assigned to the as-of-right scenario. Additionally, at hearing the applicant's architect stated that the upper floor of the Premises had been used as light storage and office and that the Uniqueness Study demonstrates that the upper floors of every building that was similarly constructed as the Premises are being used exclusively as residential. Finally, the applicant amended the drawings to show the DEP conditions of approval, including preparation sealing and vapor barrier in the cellar and window attenuation levels.

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*, the legalization of two residential units on the second and third floors of an existing three-story, plus cellar, building contrary to Z.R. § 42-10; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 13, 2022"—Eight (8) sheets; and *on further condition*:

THAT the cellar floor shall be thoroughly cleaned and sealed;

THAT a sump cover shall be installed;

THAT cracks, cuts, or utility entries shall be sealed with a non-volatile organic compound and/or foam such as minimum 20-mil and science technologies retro coat sealer, and gel, and the work shall be inspected;

THAT the proposed vapor barrier system shall be used unless an amendment is approved by DEP;

THAT an alternate means of ventilation shall be provided during the closed window condition;

THAT HVAC equipment for building heating and cooling shall comply with NYC Noise Code;

THAT exterior walls and windows for the residential unit (floors two and three) shall allow for a window-wall attenuation of 45 dB(A) to achieve a minimum of 45 dB(A) interior noise level;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-43-BZ"), shall be obtained within two years, by February 28, 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.

MINUTES

Adopted by the Board of Standards and Appeals,
February 28, 2022.

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – Variance (§72-21) to permit the development of a 17-story, mixed-use, community facility and residential building on a waterfront lot contrary to ZR §62-322 (Floor Area and Floor Area Ratio (“FAR”)); ZR §62-341 (Maximum Base Height and Building Height); ZR §62-341(a)(2)(Setbacks) and ZR §25-23 & 25-31(parking). R6 zoning district.

PREMISES AFFECTED – 128 Beach 9th Street, Block 15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for adjourned hearing.

2019-264-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, owner.

SUBJECT – Application September 11, 2019 – Variance (§72-21) to permit the development of school (UG 3) (Congregation Lev Bais Yaakov) contrary to ZR §33-121 (FAR) and ZR §33-431 (height of front wall and sky exposure). C1-2/R4 zoning district.

PREMISES AFFECTED – 3568 Nostrand Avenue, Block 7386, Lot 129, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for adjourned hearing.

2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27th Street Property Investors IV, LLC, owner; Equinox West 27th 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 27th Street, Block 829, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to PCE for deferred decision.

2020-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1215 East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family

residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street, Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for deferred decision.

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – 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.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to PCE for deferred decision.

2021-9-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Red Hook JV LLC, owner.

SUBJECT – Application January 15, 2021 – Variance (§72-21) to permit the development of a 15-story mixed-use residential, commercial and manufacturing building contrary to ZR §42-10 (Use), ZR §43-12 (FAR) and ZR §43-28 (Rear Yard). M2-1 zoning district.

PREMISES AFFECTED – 145-163 Wolcott Street, Block 574, Lot(s) 1, 23 and 24, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for continued hearing.

2021-32-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yehuda Eckstein, owner.

SUBJECT – Application May 24, 2021 – Special Permit (§73-622) to permit the enlargement of an existing home contrary to ZR §23-141 (FAR and OSR); ZR §23-47 (rear yard) and ZR §23-461(a) (side yard). R2 zoning district.

PREMISES AFFECTED – 1471 East 26th Street, Block 7680, Lot 18, Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for decision, hearing closed.

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY
FEBRUARY 28 AND MARCH 1, 2022
2:00 P.M.**

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

2017-269-BZ

APPLICANT – David L Businelli, R.A., for Grasmere
Avenue LLC, owner; Auto Pro Collission Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance
 (§72-21) to permit the legalization of a one-story
enlargement of an existing non-conforming Automotive
Repair Facility (UG 16B) contrary to ZR §22-10. R3-2
zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block
03163, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 6-7,
2022, at 10 A.M., for continued hearing.

2020-69-BZ

APPLICANT – MBA Architects, for William Moses,
owner.

SUBJECT – Application September 9, 2020 – Variance
 (§72-21) Variance (§72-21) to permit the legalization of
dwelling units contrary to ZR 42-10. M1-1 zoning district.

PREMISES AFFECTED – 44 New Lots Avenue, Block
3860, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #16BK

ACTION OF THE BOARD – Laid over to May 9-
10, 2022, at 10 A.M., for postponed hearing.

Carlo Costanza, Executive Director

BULLETIN

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March 25, 2022

DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Vacant, *Counsel*

OFFICE - 22 Reade Street, 1st Floor, New York, N.Y. 10007

HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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New Case Filed Up to March 14-15, 2022

2022-16-A

664 Coney Island Avenue, Block 5378, Lot(s) 0005, Borough of **Brooklyn, Community Board: 12**. An administrative appeal challenging the Department of Buildings' final determination. The appeal challenges the DOB approval that an Auto Laundry does not comply with required reservoir spaces. C8-2 zoning district. C8-2 district.

2022-17-A

27 Stewart Avenue, Block 2994, Lot(s) 0075, Borough of **Brooklyn, Community Board: 1**. 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. M1-2 zoning district. M1-2 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY & TUESDAY, APRIL 11-12, 2022
10 A.M. and 2 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, April 11th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday, April 12th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

182-85-BZ

APPLICANT – Eric Palatnik, P.C., for 209-11 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the enlargement of a contractor's establishment (UG 16) which expired on August 22, 2021. R6B zoning district.

PREMISES AFFECTED – 209-11 20th Street, Block 637, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #7BK

183-85-BZ

APPLICANT – Eric Palatnik, P.C., for 206 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom which expired on September 19, 2021. R6B zoning district.

PREMISES AFFECTED – 206/8 20th Street, Block 640, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #7BK

268-03-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Park Circle Realty Associates, owner.

SUBJECT – Application October 13, 2021 – Extension of Term (§11-411) for the continued operation of an automotive service station which will expire on January 27, 2024; Waiver of the Rules. C1-2/R3-2 zoning district

PREMISES AFFECTED – 145-55 Guy Brewer Boulevard, Block 13313, Lot 40, Borough of Queens.

COMMUNITY BOARD #13Q

174-07-BZ

APPLICANT – Eric Palatnik, P.C., for REMICA Property Group Corp., owner; BOLLA EM Realty, LLC, lessee.

SUBJECT – Application April 22, 2020 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an automotive service station (UG 16B), which expired on June 17, 2018; Extension of Time to Obtain a CO which expired on June 17, 2016; Waiver of the Board's Rules of Practice and Procedure. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, Block 6758, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

6-14-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application March 10, 2021 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on February 28, 2021. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

128 thru 130-15-BZ

APPLICANT – Terminus Group, LLC, for John Massamillo, owner

SUBJECT – Application January 24, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a three-family attached residential building which expires on April 10, 2022. R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682, 684 Van Duzer Street, Block 615, Lot(s) 95, 96, 97, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEALS CALENDAR

2021-68-A

APPLICANT – Bernard Kho, R.A., for Dean Johanson, owner.

SUBJECT – Application October 22, 2021 – Proposed development of a NYC School Construction Authority (SCA) school building located on a site not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district. Special South Richmond Development District.

PREMISES AFFECTED – 348A Deisius Street, Block 6566, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

2021-86-BZY

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 218 Holding Inc., owner.

SUBJECT – Application November 20, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district.

PREMISES AFFECTED – 88 Walker Street, Block 196, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #1M

2022-6-BZY

APPLICANT – Herrick, Feinstein LLPC, for Griffon Gansevoort Holdings LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning.

PREMISES AFFECTED – 55 Gansevoort Street, Block 644, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #1M

ZONING CALENDAR

2019-256-BZ

APPLICANT – Sheldon Lobel, P.C., for SB1 Holdings LLC, owner.

SUBJECT – Application September 6, 2019 – Variance (§72-21) to permit the development of a 12-story mixed-use building, with ground floor commercial space (UG 6), and ambulatory diagnostic facility community space (UG 4) contrary to floor area (§§ 33-123) and parking (§ 36-21). C4-2 zoning district.

PREMISES AFFECTED – 1508 Avenue Z, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2020-71-BZ

APPLICANT – Eric Palatnik, P.C., for Strong River Properties LLC, owner.

SUBJECT – Application September 11, 2020 – 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.

PREMISES AFFECTED – 166 Coffey Street, Block 585, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021 – Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district.

PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.

COMMUNITY BOARD #10M

2021-40-BZ

APPLICANT – Terminus Group, LLC, for 157 West 24th Street Lodging LLC, owner.

SUBJECT – Application June 18, 2021 – Variance (§72-21) to permit the development of a fifteen (15) story mixed-use building contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 157 W 24th Street, Block 800, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

Margery Perlmutter, Chair/Commissioner

MINUTES

PUBLIC HEARINGS
MONDAY-TUESDAY, MARCH 14-15, 2022
10:00 A.M.

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

SPECIAL ORDER CALENDAR

378-45-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§ 11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubritorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an amendment of a previously approved variance, under Z.R. § 11-412, permitting the operation of automotive service stations (Use Group (“UG”) 16B) seeking to permit a change in the configuration of an existing gasoline pumps and the addition of a canopy above the gasoline pumps.

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, with continued hearings on October 4, 2021, November 29, 2021, and January 24, 2022, and then to decision on March 14, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 12, Queens, recommends denial this application.

The Premises are located at the southeast intersection of Sutphin Boulevard and Foch Boulevard, within a C2-2 (R5D) zoning district, in Queens. With approximately 185 feet of frontage along Sutphin Boulevard, 128 feet of frontage along Foch Boulevard, and 24,734 square feet of lot area, the Premises are occupied by a one-story automotive repair building and accessory office (2,129 square feet) and gasoline pumps.

The Board has exercised jurisdiction over the Premises since October 23, 1945, when, under the subject calendar number, the Board granted a variance to permit the

proposed extension for a lubritorium as indicated on the plans filed with the application, on condition that at the end of the two-year term, to expire on October 23, 1947, the building be removed; all permits be obtained and all work be completed within six months, by April 23, 1946.

On November 5, 1947, under the subject calendar number, the Board amended the resolution to extend the term of the variance for two years, to expire on November 5, 1949, on condition that otherwise as amended, the resolution dated October 23, 1945 be complied with in all respects and that a certificate of occupancy be obtained.

On November 1, 1949, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for two years, to expire on November 1, 1951, on condition that otherwise as amended, the resolution dated October 23, 1945 be complied with in all respects; and that a certificate of occupancy be obtained.

On March 27, 1951, under the subject calendar number, the Board further amended the resolution to add that in the event the owner desires to extend the area and reconstruct the gasoline station and to reduce the area as to the portion in the residence district along 148th Street, such changes may be made substantially as proposed as shown on plans filed with the application, for a term of 15 years, to expire on March 27, 1966, on condition that all existing buildings and uses on the Premises be removed and the Premises rearranged and reconstructed substantially as indicated on such plans; the area of the altered station be solely within the business use district; there be erected on the rear lot line to the west and the side lot line to the north a woven wire fence of the chain link type erected on a masonry foundation for a total height of not less than 5'-6" where indicated; a masonry wall be constructed on the Foch Boulevard street line for a distance of approximately 10 feet from the line of the business area; such wall be properly coped and be at least 4'-6" in height; the accessory building be located and arranged and of the design substantially as indicated and in all other respects comply with the requirements of the building code therefor; the exterior of the accessory building be of brick; planting areas be maintained along the fences on the interior lot lines as indicated protected by a 6" by 6" concrete curbing and returned as indicated to the rear wall of the accessory building; planting be suitable for the purpose; curb cuts be restricted to three curb cuts from Sutphin Boulevard of the width as indicated on such plans and two curb cuts to Foch Boulevard located where indicated; no curb cuts to Foch Boulevard located where indicated; no curb cuts be nearer than five feet to any lot line as prolonged; within the plot at the intersection there be erected a block of concrete extending for a distance of not less than five feet from the intersection along either building line; such a block may be segmental in shape but be located substantially where shown facing Sutphin Boulevard and located approximately 13 feet from the building line; the sidewalks and curbing around the Premises be reconstructed or repaired to the satisfaction of the borough president; the number of gasoline storage tanks not exceed 12 550 gallon tanks; such

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portable fire-fighting appliances be maintained within the accessory building as the fire commissioner requires; minor repairs may be permitted under Section 7, subdivision i, for a similar term with hand tools and carried on only within the accessory building; parking of cars waiting to be serviced or having been serviced may be permitted toward the northerly side in the space as indicated; the balance of the Premises where not occupied by planting, the accessory building and pumps be paved with concrete or bituminous paving; signs be restricted to a permanent sign attached to the façade of the accessory building and the illuminated globes of the pumps, excluding all roof signs and all temporary signs but permitting the erection within the building line of a post standard at the intersection for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not more than four feet; all permits be obtained and all work completed within one year from the date of the resolution, by March 27, 1952, and a new certificate of occupancy be obtained.

On May 1, 1951, under the subject calendar number, the Board further amended the resolution to remove reference to the term to state that in the event the owner desires to extend the area and reconstruct the gasoline station and to reduce the area as to the portion in the residence district along 148th Street, such changes may be made substantially as proposed as shown on plans filed with the application, on condition that all existing buildings and uses on the Premises be removed and the Premises rearranged and reconstructed substantially as indicated on such plans; the area of the altered station be solely within the business use district; there be erected on the rear lot line to the west and the side lot line to the north a woven wire fence of the chain link type erected on a masonry foundation for a total height of not less than 5'-6" where indicated; a masonry wall be constructed on the Foch Boulevard street line for a distance of approximately 10 feet from the line of the business area; such wall be properly coped and be at least 4'-6" in height; the accessory building be located and arranged and of the design substantially as indicated and in all other respects comply with the requirements of the building code therefor; the exterior of the accessory building be of brick; planting areas be maintained along the fences on the interior lot lines as indicated protected by a 6" by 6" concrete curbing and returned as indicated to the rear wall of the accessory building; planting be suitable for the purpose; curb cuts be restricted to three curb cuts from Sutphin Boulevard of the width as indicated on such plans and two curb cuts to Foch Boulevard located where indicated; no curb cuts to Foch Boulevard located where indicated; no curb cuts be nearer than five feet to any lot line as prolonged; within the plot at the intersection there be erected a block of concrete extending for a distance of not less than five feet from the intersection along either building line; such a block may be segmental in shape but be located substantially where shown facing Sutphin Boulevard and located approximately 13 feet from the

building line; the sidewalks and curbing around the Premises be reconstructed or repaired to the satisfaction of the borough president; the number of gasoline storage tanks not exceed 12 550 gallon tanks; such portable fire-fighting appliances be maintained within the accessory building as the fire commissioner requires; minor repairs may be permitted under Section 7, subdivision i, for a similar term with hand tools and carried on only within the accessory building; parking of cars waiting to be serviced or having been serviced may be permitted toward the northerly side in the space as indicated; the balance of the Premises where not occupied by planting, the accessory building and pumps be paved with concrete or bituminous paving; signs be restricted to a permanent sign attached to the façade of the accessory building and the illuminated globes of the pumps, excluding all roof signs and all temporary signs but permitting the erection within the building line of a post standard at the intersection for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not more than four feet; all permits be obtained and all work completed within one year from the date of the resolution, by May 1, 1952, and a new certificate of occupancy be obtained and that other as herein amended the conditions of the resolution of March 27, 1951 be complied with.

On May 20, 1952, under the subject calendar number, the Board further amended the resolution to extend the time to obtain permits and complete the work on condition that all permits be obtained and all work be completed within six months, by November 20, 1953; and the boiler room may be omitted and heating obtained by unit heaters of a type approved by the Board and hot water for office use may be obtained by means of an approved heater located in a room enterable from the office adjacent in the accessory building.

On March 16, 1971, under the subject calendar number, the Board further amended the resolution to add that the accessory building may be altered substantially as shown on the revised drawings of the proposed conditions submitted with the application, on condition that other as herein amended the resolution be complied with in all respects.

The applicant seeks an amendment to the existing variance in order to permit (i) a change in the configuration of the existing gasoline pump and (ii) to add a canopy above the gasoline pumps. The applicant represents that the gasoline service station at the subject site operates 24 hours, seven days a week, with one attendant working per shift, and the repair shop portion operates seven days a week from 8 a.m. to 5 p.m. with four employees. The applicant states that the proposed amendment to the site layout would diminish the impacts associated with queuing and vehicular circulation at the Premises. The applicant further represents that because the existing pumps are not covered, patrons are not covered from weather elements and less lighting is directed at the gas pumps reducing safety in the area when dark.

Over the course of hearings, the Board raised concerns

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about the applicant's proposed plans which did not demonstrate the arbor vitae bushes along the property line and the proposed street trees along 148th Street or detail the in ground planting beds located along the residential property line. Additionally, the Board directed the applicant to provide proof of submission to the Department of Parks for requested street trees and a lighting diagram in which there was no light spread onto the adjacent residential property. In response, the applicant revised the plans, submitted a copy of its Department of Parks' street tree request form, as filed, and provided a lighting diagram demonstrating the addition of a shield to light that was spreading on the adjacent residential property.

By letter dated February 19, 2021, the Fire Department, Bureau of Fire Prevention states that it has reviewed the application materials and states that a review of its records indicated that the subject automotive service station is current with their Fire Department permits with respect to the storage of combustible liquids, lead detection equipment, underground storage tanks and fire-suppression (dry-chemical) system. Applications have been filed with the Bureau of Fire Prevention Tech Management for installation fire suppression system and installation of underground tanks and associated safety features. Based on the foregoing, the Fire 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.

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 October 23, 1945, as amended through March 3, 1971 so that as amended this portion of the resolution shall read: "to permit the change in the configuration of the existing gasoline pumps and the addition of a canopy above the reconfigured gasoline pumps; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received February 23, 2022"—Sixteen (16) sheets; 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. 378-45-BZ"), shall be obtained within one year, by March 14, 2023;

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

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

THAT the Department of Buildings must 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 14, 2022.

CORRECTION: This resolution adopted on March 14, 2022, under Calendar No. 58-99-BZ, is hereby corrected to read as follows:

58-99-BZ

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

SUBJECT – Application September 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy and Complete Construction of a previously approved variance permitting the operation an automotive service station (UG 16B) which expired on March 19, 2020. C1-2/R3-2 zoning district.

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

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

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 obtain a certificate of occupancy for an automotive service station (Use Group ("UG") 16B) with accessory automotive repair, which expired on March 19, 2020, and an amendment to the same.

A public hearing was held on this application on February 8, 2022, after due notice by publication in *The City Record*, and then to decision on March 14, 2022. Community Board, 7, Queens, recommends approval of this application.

The Premises are a triangular lot bounded by Utopia Parkway to the east, 18th Avenue to the north, 19th Avenue to the south, and 169th Street to the west, within an R3-2 (C1-2) zoning district, in Queens. With approximately 201 feet of frontage along Utopia Parkway, 31 feet of frontage along 18th Avenue, 81 feet of frontage along 19th Avenue, 195 feet of frontage along 169th Street, and 10,860 square feet of lot area, the Premises are occupied by an existing one-story building (1,815 square feet of floor area) used for automotive service station (UG 16B) and automotive repair facility with eight accessory off-street parking spaces.

The Board has exercised jurisdiction over the Premises since December 1, 1959, when, under BSA Cal. No. 182-52-BZ, the Board granted a variance, for a term of 15 years, to expire December 1, 1974, to permit, in a then-local retail use district, the erection and maintenance of a gasoline service station, lubricatorium, minor auto repairs, car washing, office and sales, storage and parking of motor vehicles, on condition that the work be done in accordance with drawings filed with the application, except that the exterior of the accessory building be redesigned to conform with the architecture of the dwelling buildings in the neighborhood;

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the working drawings be submitted to the Board for approval before they are submitted to the Building Department; the vents from the gasoline storage tanks be taken underground to the accessory building and carried up in a masonry enclosure similar to a chimney as part of the accessory building; the height of the masonry enclosure and the vents be not more than three feet above the roof of the building; the 5'-6" high walls shown along 169th Street and 19th Avenue be of the same face brick as used on the building; the pumps be placed not less than 15 feet back from the street line; the flood lights be eliminated; the owner arrange with the City to plant trees along the sidewalk of 169th Street and 19th Avenue; the operation of the gasoline station not extend beyond 11:00 p.m.; all laws, rules and regulations applicable be complied with; all permits, including a certificate of occupancy, be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution, by December 1, 1975.

On July 6, 1960, under BSA Cal. No. 182-52-BZ, the Board approved working drawings, as to the arrangement and design, as being in substantial compliance with the terms and conditions of the resolution adopted by the Board on December 1, 1959, except that the toilet rooms be rearranged so that the doors to the rooms are not contiguous.

On March 11, 1975, under BSA Cal. No. 182-52-BZ, the Board further amended the resolution to extend the term for ten years, to expire March 11, 1985, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained.

On April 16, 1985, under BSA Cal. No. 182-52-BZ, the Board further amended the resolution to extend the term for ten years, to expire March 11, 1995, to eliminate the five-foot-wide planted area along 19th Avenue as previously required, and to permit the existence of the dual floodlight, substantially as shown on revised drawings filed with the application, on condition that the dual floodlight be directed away from the residential homes and be used for night security only; the street trees on 19th Avenue and 169th Street be planted in accordance with the requirements of the Department of Parks and be planted within six months, by October 16, 1985; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian

or vehicular traffic; other than herein amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 16, 1986.

On December 10, 1985, under BSA Cal. No. 182-52-BZ, the Board further amended the resolution to permit the erection of a six-foot-high 100% slatted chain link fence along the 169th Street side of the station in lieu of the 5'-6" high brick wall as previously approved, substantially as shown on revised drawings filed with the application, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and, other than as amended the resolution be complied with in all respects.

On October 26, 1999, under the subject calendar number, the Board granted an application to reinstate the

subject gasoline service station and automobile repair facility use pursuant to Z.R. § 11-411, in a then-R6 zoning district, on condition that all work substantially conform to drawings, as they apply to the objection, filed with the application; the term of the variance be limited to ten years, expiring October 26, 2009; signage be provided in accordance with BSA-approved plans; the business operation not extend beyond 11:00 p.m.; fencing and screening be provided in accordance with BSA-approved plans; lighting be provided in accordance with BSA-approved plans and be positioned down and away from the adjacent residential uses; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings 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 October 26, 2000.

On February 25, 2003, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution¹, adopted on October 27, 1999, to permit the extension of time to obtain a certificate of occupancy for an additional two years, by February 25, 2005, and to permit the erection of a new metal canopy over new concrete pump islands, on condition that all work substantially conform to drawings, as they apply to the objections, filed with the application; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; there be no coin-operated car washes on the Premises; the conditions, and all conditions from prior resolutions, appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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 September 20, 2011, 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, to expire October 26, 2019, on condition that any and all work substantially conform to drawings, as they apply to the objections, filed with the application; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and; 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

¹ To the extent this resolution references the extension of time of a variance that expired on April 10, 2001, a review of Board records demonstrates this information is incorrect. The variance did not expire until October 26, 2009.

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configuration(s) not related to the relief granted.

On March 19, 2019, under the subject calendar number, the Board further amended the resolution to grant an extension of the term of the variance for a term of ten years on condition that all work and site conditions conform to drawings filed with the application; the term of this grant shall expire on October 26, 2029; the hours of operation for the automotive service station be limited to Monday through Saturday, 6:00 a.m. to 7:00 p.m., and closed on Sunday; the station be equipped and maintained with security cameras on the building that monitor the entirety of the Premises and function 24 hours per day, seven days per week and also be utilized to monitor customer vehicles so that any prohibited parking on the Utopia Parkway sidewalk can be documented to assist in preventing future occurrences; an attendant monitor both the property and the Utopia Parkway sidewalk during normal business hours to ensure vehicles visiting the station only park on site in designated parking stalls and not on the sidewalk; if vehicles are observed parking on the sidewalk, the attendant immediately notify the vehicle owner to move their car to an on-site parking stall or find another location off of the property (i.e. side street) until such time an on-site parking stall becomes available; signs be posted and maintained on the north and east sides of the building adjacent to Utopia Parkway notifying customers of allowed parking locations and will read as follows (or equivalent): "NOTICE: CUSTOMER PARKING RESTRICTED TO DESIGNATED ON-SITE PARKING STALLS ONLY. PARKING ON UTOPIA PARKWAY SIDEWALK IS PROHIBITED;" the sidewalks, from the property line to the curb, surrounding the site on all frontages be replaced and maintained in a first-rate condition with tree-pits provided; the knee wall and any buckling portions of fencing located on 169th Street be repaired and maintained in a first-rate condition; there be no storage of vehicles on the site other than those vehicles awaiting service; the Premises be maintained free of debris and graffiti; all fencing be maintained in good condition; all signage comply with C1 zoning regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the conditions appear on the certificate of occupancy; a certificate of occupancy indicating this approval and calendar number ("BSA Cal. No. 58-99-BZ") be obtained within one year, by March 19, 2020; 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 time to have obtained a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than 30 days since the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application. The applicant also seeks an amendment to the variance to permit modifications to the

Premises to facilitate ADA compliance. These modifications include replacing a portion of the existing building walkway along the north elevation with an ADA-compliant walk/ramp; restriping a parallel parking stall with handicap parking/loading stalls that are head in stalls with a required 24' back up aisle clearance; and striping an ADA-compliant path from the handicap stalls to the new building ramp.

The applicant represents that all modifications to the Premises have been completed and the applicant anticipates requiring three years to obtain a certificate of occupancy. In response to Board comments, the applicant revised the plans to demonstrate the location of bollards protecting the modified building walkway, the notice for customer parking sign, reading "NOTICE: CUSTOMER PARKING RESTRICTED TO DESIGNATED ON-SITE STALLS ONLY, PARKING ON UTOPIA PKWY SIDEWALK IS PROHIBITED", and the location of the security camera.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated October 26, 1999, as amended through March 19, 2019, so that as amended this portion of the resolution shall read: "to grant a three-year extension of time to obtain a certificate of occupancy, to expire on March 14, 2025, and to permit the noted modifications for ADA compliance; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received February 25, 2022" – Seven (7) sheet; and *on further condition*:

THAT the term of this grant shall expire on October 26, 2029;

THAT the hours of operation for the automotive service station shall be limited to Monday through Saturday, 6:00 a.m. to 7:00 p.m., and closed on Sunday;

THAT the station shall be equipped and maintained with security cameras on the building that monitor the entirety of the Premises and function 24 hours per day, seven days per week and shall also be utilized to monitor customer vehicles so that any prohibited parking on the Utopia Parkway sidewalk can be documented to assist in preventing future occurrences;

THAT an attendant shall monitor both the Premises and the Utopia Parkway sidewalk during normal business hours to ensure vehicles visiting the station only park on site in designated parking stalls and not on the sidewalk; if vehicles are observed parking on the sidewalk, the attendant shall immediately notify the vehicle owner to move their car to an on-site parking stall or find another location off of the property (i.e. side street) until such time an on-site parking stall becomes available;

THAT signs shall be posted and maintained on the north and east sides of the building adjacent to Utopia Parkway notifying customers of allowed parking locations and will read as follows (or equivalent): "NOTICE: CUSTOMER PARKING RESTRICTED TO DESIGNATED

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ON-SITE PARKING STALLS ONLY. PARKING ON UTOPIA PARKWAY SIDEWALK IS PROHIBITED;”

THAT the sidewalks, from the property line to the curb, surrounding the site on all frontages shall be replaced and maintained in a first-rate condition with tree-pits provided;

THAT the knee wall and any buckling portions of fencing located on 169th Street shall be repaired and maintained in a first-rate condition;

THAT there shall be no storage of vehicles on the site other than those vehicles awaiting service;

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

THAT all fencing shall be maintained in good condition;

THAT all signage shall comply with C1 zoning regulations;

THAT 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. 58-99-BZ”), shall be obtained within three years, by March 14, 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, March 14, 2022.

160-08-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for HJC Holding Corp., owner.

SUBJECT – Application February 5, 2021 – Extension of Term of a previously approved Variance (§72-21) permitting commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B) which expired on July 13, 2013; Amendment to eliminate the accessory fuel storage and motor vehicles sales and repair use; Extension of Time to obtain a Certificate of Occupancy which expired on January 13, 2012; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Block 4527, Lot 0000, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for deferred decision.

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 July 18-19, 2022, at 10 A.M., for deferred decision.

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. C4-2A/R5D zoning district.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to PCE, for deferred decision.

397-47-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Park Service Station Realty, LLC, owner.

SUBJECT – Application March 31, 2021 – Amendment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). The amendment seeks to permit the installation of a new canopy and the relocation of air and vacuum tower. R3-1 zoning district.

PREMISES AFFECTED – 64-01/11 Woodhaven Boulevard, Block 3136, Lot 24, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for decision, hearing closed.

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132-58-BZ

APPLICANT – Nasir J. Khanzada, for Maria Barone, owner; Swaranjit Singh, lessee.

SUBJECT – Application July 6, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 20, 2020; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R3-2 zoning district. Community Board 7, Queens.

PREMISES AFFECTED – 17-45/17-55 Francis Lewis Boulevard, Block 4747, Lot(s) 31, 41, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for decision, hearing closed.

467-58-BZ

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

SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board’s Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.

PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for continued hearing.

1254-80-BZ

APPLICANT – Jay Goldstein, Esq., for Sephardic Institute for Advanced Learning, owner.

SUBJECT – Application May 26, 2020 – Amendment of a previously approved Variance (§72-21) to permit the enlargement of a previously approved house of worship contrary to underlying bulk requirements. R6A, Special Ocean Parkway District.

PREMISES AFFECTED – 511 Avenue R, Block 394, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for continued hearing.

110-99-BZIII

APPLICANT – Law Office of Jay Goldstein, for Dkiuc & Company, LLC, owner.

SUBJECT – Application May 6, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive repair shop (Use Group 16B) which expired on June 27, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on September 18, 2016; Waiver of the Board’s Rules of Practice and Procedures. R6B zoning district.

PREMISES AFFECTED – 56-58 Kosciuszko Street, Block 1783, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Roman Midyany, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-622) to permit the enlargement of an existing single family which expired December 12, 202. R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

2016-1219-BZII

APPLICANT – Sheldon Lobel, P.C., for 74th and Myrtle LLC, owner.

SUBJECT – Application November 15, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a two-story mixed-use commercial and residential building which expired on November 17, 2021. R4-1 zoning districts.

PREMISES AFFECTED – 73-45 Myrtle Avenue, Block 3823, Lot 88, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

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ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

170-93-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for JABE Contracting LLC, owner.

SUBJECT – Application August 25, 2020 – Proposed enlargement of a commercial building not fronting on a legally mapped street, contrary to General City Law §36. M3-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 220 Industrial Loop, Block 7206, Lot 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for adjourned hearing.

2020-39-A

APPLICANT – AVID Architecture, for Danny Lin, owner.
SUBJECT – Application May 4, 2020 – Proposed construction of a single-family residence, within the bed of a mapped street, contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 235 Oder Avenue, Block 2887, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 30, 2020, acting on Alteration Type I Application No. 510113707, reads in pertinent part:

1. Gen. City Law Section 35: Proposed building is in the bed of a mapped street, contrary to General City Law Section 35.
2. ZR 107-461: Proposed building does not comply with the minimum required front yard, contrary to ZR 107-461.”

This application consists of two parts: first, a variance, pursuant to Z.R. § 72-21, to permit the conversion and enlargement of a one-story plus mezzanine Use Group (“UG”) 4 house of worship at the Premises that does not comply with zoning requirements for front yards (Z.R. §§ 23-34, 107-461); and second, an amendment to a previously granted waiver of General City Law (“GCL”) § 35 to permit an extension into the bed of the mapped street, a long with a waiver of front yard regulations (Z.R. § 107-461) pursuant to Z.R. § 72-01(g) along the unbuilt portion of Lamoka Avenue.

A public hearing was held on this application on May 5, 2020, after due notice by publication in *The City Record*, with continued hearings on August 25, 2020, February 8, 2020, May 11, 2021, and February 8, 2022, and then to decision on March 14, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

Community Board 3, Staten Island, (the “Community Board”) recommends disapproval of this application. The Community Board cites concerns regarding traffic and neighborhood circulation and questioned whether the proposed parking at the Premises could accommodate weekend demand. The Community Board raises concerns that patrons of the house of worship will utilize the surrounding streets to park, as well as vehicular ingress and egress about the house of worship. Further, the Community Board stated that a house of worship with weekday activities is a use equivalent to a community facility use. The Board received three form letters in opposition to this application and citing the potential for traffic and congestion.

I.

The Premises are located on an irregularly shaped, part-corner lot and part interior-lot with frontage on Giffords Lane and Sampson Avenue, located within the bed of Lamoka Avenue, a mapped but unbuilt street running east-west between Giffords Lane and Sampson Avenue partially within an R2 zoning district and partially within an R2 (C1-1) zoning district and in the Special South Richmond Development District (“SSRDD”), on Staten Island. With approximately 97 feet of frontage along Giffords Lane, 66 feet of frontage along Sampson Avenue, along, and a portion within the bed of, Lamoka Avenue, and

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27,822 square feet of lot area, the Premises are improved with an existing one-story, with mezzanine, commercial building (6,174 square feet of floor area) used for a plumbing supply company.

II.

The Board has exercised jurisdiction over the Premises since March 13, 1973, when, under BSA Cal. No. 602-71-BZ, the Board granted a variance, under Z.R. § 72-21, to permit, in a then-C1-1 zoning district and R3-2 zoning district, the reconstruction of a plumbing supply and display establishment with accessory parking and loading in the open area, for a term of 15 years, on condition that all work substantially comply with plans filed with the application; the hours of operation be limited from 7:30 a.m. to 6:00 p.m. weekdays and Saturdays; no storage be allowed in the open area and a seven-foot-high brick wall be constructed along Sampson Avenue; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year from the date of the resolution.

On March 13, 1973, under BSA Cal. No. 603-73-A, the Board granted a waiver of GCL § 35 to permit construction within the bed of a mapped street on condition that all work conform to the resolution adopted under BSA Cal. No. 602-71-BZ on that same date.

On May 28, 1974, and May 28, 1974, under BSA Cal. No. 602-71-BZ, the Board amended the resolution to extend the time to complete construction for periods of one year, the latter of which to expire on November 20, 1976, on condition that no further extension of time be considered by the Board.

On September 19, 1978, under BSA Cal. No. 602-71-BZ, the Board further amended the resolution by adding that the existing 12-inch-wide 7-foot-high brick wall fronting on Sampson Avenue from the northerly property line to the southerly line of Lamoka must conform to revised drawing of proposed conditions, filed with the application, on condition that other than as amended the resolution be complied with in all respects.

On March 28, 1989, under BSA Cal. No. 602-71-BZ, the Board further amended the resolution to extend the term for five years, to expire on March 13, 1993, and to legalize the removal of the interior fence, substantially as shown on plans filed with the application, on condition that the street trees and landscaping be maintained and replaced when required and the Premises be maintained clean and free of graffiti and debris of any kind at all times; 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 28, 1990.

III.

Originally, the applicant proposed to convert and enlarge the existing building into a one-story, with mezzanine, house of worship with proposed front yards of 1' and 12.25', side yards with widths of 7.83' and 1', a rear yard with 0.3' of depth, and 38 off-street accessory parking spaces.

The existing building has non-complying front yard of

12.42' along Sampson Avenue where 15' required; a noncomplying side yard of 7.9' along the northern lot line for the first 100' where 10' is required, and a non-complying 7.89' rear yard where 8' is required; a non-complying side yard of 7.86' where none is required, but open areas must be 8'; and a noncomplying side yard of 0.3' along the western side lot line where none is required, but open areas must be 8'.

The applicant now seeks a variance, pursuant to Z.R. § 72-21, and continues to propose to convert and enlarge the existing building into a one-story, with mezzanine, house of worship and proposes to retain the existing noncomplying side yards of 7.9', 7.86', and 0.3', as well as the existing noncomplying rear yard of 7.89'. The proposed house of worship building will have 10,005 square feet of floor area (0.36 FAR), a proposed wall height is 25', a lot coverage of 31%, and 29 accessory off-street parking spaces, in excess of the required 27 spaces. However, the proposed front yards of the house of worship will be 1' (at the intersection of Lamoka Avenue and Sampson Avenue) and 11.7' (along Sampson Avenue, an existing condition), where 18' and 15' deep front yards are required (Z.R. § 107-461).

The applicant represents that the ground floor of the Premises will contain approximately 8,610 square feet of floor area with a sanctuary, multipurpose room, warming pantry, security office, A/V control room, security office, children's programming, restrooms, and a lobby. In response to Board comments over the course of hearings, the applicant proposes a 40 square-foot trash storage room for dry and refrigerated trash storage. The proposed mezzanine level will contain approximately 1,395 square feet of administrative spaces and a small meeting room, as well as mechanical space with elevator access between the main floor and mezzanine. The parking area, with 29 spaces, will contain a pickup/drop-off space for the house of worship's shuttle, which will operate during peak hours, as needed, to transport congregants to and from the Premises to nearby municipal parking areas.

Accordingly, the applicant seeks the relief herein requested.

IV.

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.

A.

First, the applicant does not assert that there is a unique physical condition which precludes it from earning a reasonable return at the subject Premises. Rather, the applicant seeks relief under the Board's application of *Cornell Univ. v Bagnardi*, 68 N.Y.2d 583 (1986) deference. Specifically, as held in *Cornell*, a zoning board must grant an educational or religious institution's application unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications. The Board acknowledges that the house of

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worship is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application. Alternatively, the applicant submits that an as-of-right development scenario for the proposed house of worship would not accommodate the current or projected programmatic needs of the applicant and would create a one-story, with mezzanine, building with 9,443 square feet of floor area, which would not provide sufficient space for the house of worship's meeting rooms and children's programming spaces. At the Board's direction and over the course of hearings, the applicant explored the possibilities of a proposal that restricted access to the Premises via Sampson Avenue, and a proposal that relief only on waivers of the General City Law and Z.R. § 72-01(g). However, the applicant submits that the proposal represents the relief necessary for the applicant to meet its programmatic needs. Accordingly, the Board finds that it is appropriate to apply the *Cornell Doctrine* to this application as proposed herein.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a nonprofit institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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. The applicant maintains that the proposed waivers of front yard requirements are minimal and do not impair the public welfare of neighboring properties. Specifically, the applicant submits that the Premises abut both a commercial corridor and a Staten Island Rapid Transit right of way and that traffic generated from the house of worship will not adversely impact the area. To this point, the applicant prepared a parking demand study, considering both field observations of the actual off-street parking utilization within a quarter mile of the Premises and an assessment of existing parking utilization during Sunday morning services at the current location of the Church at 2474 Forest Avenue, Staten Island. The parking demand study observed ample on-street parking supply on the streets surrounding the Premises; residential side streets do not carry here a resident parking requirement or Sunday restriction and, therefore, on-street parking capacity would supplement the parking proposed at the Premises. The parking demand study also observed, during peak hours, the availability of 40 of 62 spaces at a municipal parking lot three blocks from the Premises, and 10 of 13 spaces available at another nearby municipal parking lot.

In support of this contention, the applicant submitted an Environmental Assessment Statement ("EAS"), determining a parking demand for its projected 250 congregants and concluding that: a maximum project demand of 108 spaces with 29 accommodated on-site, resulting in a need for 79 off-site parking spaces; available off-street public parking at two locations contain 76

available stalls; parking demand generated by proposed development under a full occupancy event could potentially create an off-street parking deficit of 29 spaces (However, the EAS notes that at least 30 available on-street spaces were observed along Sampson Avenue and Schley Avenue, immediately adjacent to the Premises); a comprehensive analysis of parking signage within a quarter mile of the Project Site confirmed the viability and legality of a generous supply of available on-street parking spaces proximate to the Premises; an analysis of transit options present within a block of the Premises found both bus and rail alternatives, making the Premises easily accessible for non-drivers, thus decreasing parking demand generated by the proposal. The EAS further concludes that after proposed construction, and projected future growth in the number of congregants, parking utilization in the Parking Study Area is expected to continue to be adequate. Additionally, the applicant commits to providing a shuttle service and three parking lot attendants during the house of worship's peak hours to decrease the reliance on parking at the Premises and ensure no adverse impact to surrounding neighbors.

The Board observed that Sampson Avenue and Schley Avenue are indeed public streets, not private streets; therefore, the Board cannot restrict congregants from driving and parking on public streets. The area has the opportunity to pursue private road restrictions, but they are public streets. The applicant's proposal results in less traffic going up and down the bulk of Sampson Avenue and Schley Avenue searching for parking. Houses of worship have occasional life events during week, but the bulk of the traffic is on Sunday.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties encountered in the Premises are inherent in the applicant's unique programmatic needs. 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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant represents that the waiver of front yard requirements is the minimum relief necessary to meet its programmatic needs.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

V.

GCL § 35 authorizes the Board to permit construction within a portion of a mapped but unbuilt street where the City has not acquired title thereto. Because the applicant proposes to extend a portion of the building within the bed of Lamoka Avenue, the applicant seeks a waiver of GCL § 35 also seeks a waiver of the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution.

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The proposed conversion would retain the existing noncomplying side and rear yards, would extend the degree of noncompliance of the existing front yard along Sampson Avenue, and would create a new noncomplying front yard along the mapped and built portion of Lamoka Avenue. The applicant proposes to elongate the existing noncompliant front yard south on Sampson Avenue, and would create a new noncompliant condition along the built portion of Lamoka Avenue. The proposed building and parking areas encroach on the bed of Lamoka Avenue, a mapped but unbuilt street.

VI.

Over the course of hearings, and in response to community concerns, the Board questioned whether the house of worship could effectively manage its parking demand to prevent adverse effects to the surrounding area.

In response, and to commit to safeguards and obligations to address these concerns, the applicant recorded a restrictive declaration, by Faith Community Church International, Inc., on June 3, 2022, recorded at Land Doc. # 888420 (the "Restrictive Declaration"), and commits to the following:

"WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Staten Island, being known and designated as Block 4624, Lot 20 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the "Premises"); and

WHEREAS, the Premises is currently improved with a 2-story structure and accessory parking spaces designed for a plumbing supply company and constructed pursuant to a New York City Board of Standards and Appeals (the "Board" or "BSA") variance under BSA Cal. No.: 602-71-BZ; and

WHEREAS, Declarant has requested by application assigned BSA Calendar Number 2019-265-BZ and 603-71-A that the BSA amend a waiver of General City Law ("GCL") § 35 and grant a variance application under Sections 72-21 and 72-01(g) of the New York City Zoning Resolution ("ZR") (the "Special Permit") to permit the development of a Use Group 3 house of worship (the "Church") the Premises contrary to bulk regulations; and

WHEREAS, the Board requested that the Declarant commit to providing a shuttle bus and attendant parking during the Church's peak hours; and

WHEREAS, the Board requires the Declarant to execute and record in the Office of the City Register of the City of New York this Declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the GCL § 35 waiver and variance 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. The Church will administer a parking program which will include at least three attendants who will direct traffic in and out of the Church's parking lot, on Giffords Lane and Sampson Avenue, and coordinate with the shuttle driver, for purposes of function and safety and to direct vehicular traffic away from Sampson and Schley Avenues;
2. One parking attendant will be located in the Church's parking lot near the Giffords Lane entrance. Two other parking attendants will be located just outside the Sampson Avenue driveway at the intersections of Sampson and Schley Avenues directing vehicles into the public parking area
3. When the Church's lot becomes full, after dropping off their passengers at the main entrance of the Church, congregants would be directed by the parking attendant to exit the lot through the Sampson Avenue driveway. There, two additional parking attendants would guide them toward the public parking area that connects Sampson and Schley Avenues, a way from neighboring residences. After services have ended, the parking attendants would direct vehicles parked in the Sampson and Schley public parking area through the Church's driveway to exit on Gifford's Lane and away from Sampson and Schley Avenues;
4. The Church will provide a shuttle van for congregants during peak hours on Sundays (9:30 AM- 12:30 PM) and will be staffed by a dedicated driver with capacity for approximately 14 passengers per trips. If and when the Church and the public parking area between Sampson and Schley Avenues are filled, congregants will be directed by the attendants to proceed to other local public parking facilities nearby;
5. The proposed shuttle van will loop between the Premises, Amboy Municipal Parking located at, 3928 Amboy Rd. Staten Island, NY 10308, the Great Kills Staten Island Railroad Station, located at the corner of Brower Ct. and Nelson Ave., and such other public parking areas as may be necessary, approximately every ten to fifteen minutes, before and after Church services as need and activity warrants;
6. A shuttle van may be added during the weekday if attendance is expected to exceed on-site parking capacity or the adjacent public parking area between Sampson and Schley Avenues;

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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;
9. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including but not limited to, the GCL § 35 and variance applications; and
10. In the event that either that the Applicant (a) elects to abandon the Use Group 3 house of worship use at the Premises, (b) the Applicant files new applications with the BSA which are approved without the need to rely upon this Declaration, or (c) an as-of-right development is approved for the Premises, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office, against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect."

The Fire Department states, by correspondence dated May 5, 2020, that the Fire Department has the following comments for this application: 1) show front entrance shown to the proposed structure on plan; 2) whether the proposed structure be provided with a fire suppression system and show location of Fire Department Connection; and, 3) clarify the street status of Lamoka and Sampson Avenue. In response, the applicant submits that the proposed community facility is Use Group A-3 (Assembly Use intended for Worship). Accordingly, an automatic sprinkling system is not required for this facility, since each of its fire areas have less than 12,000 square feet and fewer than 300 (actual) occupants, (Par. 903.2.1.3). As a result, the applicant does not intend to provide an automatic sprinkling system in the proposed facility.

The Department of Environmental Protection ("DEP") states, by letter dated January 31, 2022, that Based on the DEP maps, there is an existing 8" diameter sanitary sewer in the bed of Lamoka Avenue between Giffords Lane and Sampson Avenue. The Amended Drainage Plan No: D-2 (R-13, Sheet 7 of 7, for the above referenced location, dated February 2, 1981, shows 10" diameter sanitary sewer and 12" diameter storm sewer in Lamoka Avenue between Giffords Lane and Sampson Avenue. The applicant has submitted a Proposed Infrastructure Plan, C1-1, prepared by Jeffrey S. Parker, R.A., dated January 17, 2022. The Proposed Infrastructure Plan shows 35' wide sewer corridor

in the bed of the mapped Lamoka Avenue, which will be available for the installation, maintenance and/or reconstruction of the future and existing sewers. Based on the above, DEP has no objections to the proposed application for GCL § 35.

VII.

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. 20BSA028R, dated March 14, 2022. The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities; open space; shadows; historic and cultural resources; urban design and visual resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions; noise; public health; neighborhood character; and, construction.

By correspondence dated April 2, 2019, 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 June 16, 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 March 3, 2021, the Department of Environmental Protection ("DEP"), Bureau of Environmental Planning and Analysis states that it has reviewed the Noise chapter of the EAS and have the following comments:

1. Based on the noise analysis performed for mobile sources, passenger car equivalent (PCE) will not be doubled as a result of the proposed project. Therefore, the project generated vehicular traffic will not have a significant impact as it pertains to noise. In addition, the noise levels from the Staten Island Railway Line (SIR) were based on measurements adjacent to the Railway line near Putnam Street and Amboy Road. The SIR line at this location is elevated above street level. It is conservative to use these measurements for the proposed project since the SIR line is below-grade at the project site. No window-wall attenuation was required for the Proposed Development.
2. Based on noise analysis performed for stationary sources, no unenclosed specific stationary noise sources of concern were identified. As the Project Site is not subject to high ambient noise levels from any nearby

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stationary source, no stationary source noise impacts from surrounding uses are anticipated. The proposed building HVAC would comply with NYC Noise Code and would not result in a new stationary source of noise. No noise impact is expected. Additionally, the Proposed Action would not introduce any new stationary noise sources such as outdoor recreational space. In conclusion, there is no potential for significant adverse noise impact as it pertains to stationary sources.

By letter dated December 1, 2021, DEP states that it has reviewed the November 2021 Remedial Action Plan “RAP” and Construction Health and Safety Plan “CHASP”. The RAP and CHASP are acceptable on condition that it is revised to incorporate DEP comments. Subsequently a revised RAP and CHASP were submitted to the board dated January 2022 addressing these items. Additionally, 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 applicable local, state, and federal laws and regulations; installation of vapor barrier; DEP approved certified clean fill/top soil, etc.).

The Department of Transportation (“DOT”) states, by correspondence dated February 11, 2022, that it has no further comments on the EAS.

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 finds that the evidence in the record supports the findings required to be made under Z.R. §§ 72-21, 72-01(g) and GCL § 35 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 does hereby make each and every one of the required findings under Z.R. §§ 72-21, 72-01(g) and GCL § 35 to *permit* the conversion and enlargement of an existing building to a one-story, with mezzanine, house of worship (UG 4) that does not comply with zoning requirements pertaining to front yards (Z.R. §§ 24-36, 107-461) and within the bed of a mapped but unbuilt street (GCL § 35); *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Board Approved March 14, 2022” — Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard on Sampson Avenue with a minimum depth of 11.7', and a front yard on Lamoka Avenue with a minimum depth of 1', as shown on the Board-approved plans;

THAT the house of worship shall administer a parking program which will include at least three attendants who will direct traffic in and out of the Church's parking lot, on Giffords Lane and Sampson Avenue, and coordinate with the shuttle driver, for purposes of function and safety and to direct vehicular traffic away from Sampson and Schley Avenues;

THAT one parking attendant shall be located in the Church's parking lot near the Giffords Lane entrance. Two other parking attendants shall be located just outside the Sampson Avenue driveway at the intersections of Sampson and Schley Avenues directing vehicles into the public parking area;

THAT when the Church's lot becomes full, after dropping off their passengers at the main entrance of the Church, congregants shall be directed by the parking attendant to exit the lot through the Sampson Avenue driveway. There, two additional parking attendants shall guide them toward the public parking area that connects Sampson and Schley Avenues, away from neighboring residences. After services have ended, the parking attendants shall direct vehicles parked in the Sampson and Schley public parking area through the Church's driveway to exit on Gifford's Lane and away from Sampson and Schley Avenues;

THAT the Church shall provide a shuttle van for congregants during peak hours on Sundays (9:30 AM- 12:30 PM) and will be staffed by a dedicated driver with capacity for approximately 14 passengers per trips. If and when the Church and the public parking area between Sampson and Schley Avenues are filled, congregants shall be directed by the attendants to proceed to other local public parking facilities nearby;

THAT the proposed shuttle van shall loop between the Premises, Amboy Municipal Parking located at, 3928 Amboy Rd. Staten Island, NY 10308, the Great Kills Staten Island Railroad Station, located at the corner of Brower Ct. and Nelson Ave., and such other public parking areas as may be necessary, approximately every ten to fifteen minutes, before and after Church services as need and activity warrants;

THAT a shuttle van may be added during the weekday if attendance is expected to exceed on-site parking capacity or the adjacent public parking area between Sampson and Schley Avenues;

THAT except as otherwise set forth herein, the Restrictive Declaration may not be modified, amended, or terminated without the prior written consent of the Board;

THAT the covenants set forth in the Restrictive Declaration 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;

THAT a Professional Engineer (P.E.) certified

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Remedial Closure Report be submitted upon completion of the proposed project indicating that all remedial requirements as set forth in the January 2022 RAP and CHASP have been properly implemented;

THAT such closure report shall be submitted prior to the receipt of a Certificate of Occupancy;

THAT failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including but not limited to, the GCL § 35 and variance applications;

THAT DOB shall review the plans approved herewith for compliance with all relevant provisions of the Zoning Resolution as if the unbuilt portions of Lamoka Avenue were not mapped;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-265-BZ & 603-71-A”), shall be obtained within four years, by March 14, 2026;

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 14, 2022.

2021-45-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Max Zalta, owner.

SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space and lot coverage), ZR §23-631(b) (perimeter wall height) and ZR §23-47 (rear yard). R3-2 zoning district.

PREMISES AFFECTED – 1714 East 27th Street, Block 6809, Lot 11, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 16, 2021, acting on DOB Application No. B00479015, 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 50%.

- 2- Proposed plans are contrary to Z.R. 23-142 in that the proposed Open Space is less than the required 65%.
- 3- Proposed plans are contrary to Z.R. 23-142 in that the proposed lot coverage exceeds the maximum required 35%.
- 4- Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0".
- 5- Proposed plans are contrary to Z.R. 23-631(b) in that the perimeter wall height exceeds 21'-0".”

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, with cellar, single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), lot coverage, open space (Z.R. § 23-142), rear yards (Z.R. § 23-47), and perimeter wall height (Z.R. 23-631(b)).

A public hearing was held on this application on February 8, 2022, after due notice by publication in *The City Record*, and then to decision on March 14, 2022. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the west side of East 27th Street, between Quentin Road and Avenue R, within an R3-2 zoning district, in Brooklyn. With approximately 26 feet of frontage along East 27th Street, 100 feet of depth, and 2,600 square feet of lot area, the Premises are occupied by an existing two-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 this application seeks to enlarge an existing single-family detached residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, with cellar, single-family detached residence with approximately 1,658 square feet of floor area (0.64 FAR), 67% of open space and 33% of lot coverage, two side yards with widths of 1'-2" and 8'-6", a rear yard with a depth of 30'-11", and a perimeter wall height of 22'. The applicant seeks to horizontally enlarge the existing building resulting in a two-story, with cellar, single-family detached residence with approximately 2,036 square feet of floor area (0.78 FAR), 60% of open space and 40% of lot coverage, two side yards with widths of 1'-2" and 7'-3", a rear yard with a depth of 20', and a perimeter wall height of 22'. The applicant proposes to increase the floor area at the first floor, from 863 square feet to 1,052 square feet, and second floor, from 795 square feet to 984 square feet.

At the Premises, pursuant to Z.R. §§ 23-142, 23-47, and 23-631(b), a maximum of 0.50 FAR is permitted, a maximum of 35% lot coverage is permitted, a minimum of

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65% open space is required, a rear yard with a minimum depth of 30 feet is required, and a maximum perimeter wall height of 21 feet is permitted. 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 71 residences (66%) have an FAR of 0.5 or greater, ranging from 0.51 to 1.04, 9 of which have an FAR of 0.78 or greater. With respect to lot coverage and open space, the applicant submitted a lot coverage study demonstrating that 95 residences (88%) within the Study Area have greater than 35% lot coverage, ranging from 36% to 57%, 58 of which (54%) have 40% lot coverage or greater. The applicant submitted a rear yard study of the subject block demonstrating that 11 residences have rear yards with less than 30 feet of depth, ranging from 26 feet to 13 feet. The applicant represents that there are no proposed changes to the perimeter wall height or overall height of the Premises and the proposed 22' perimeter wall height is a pre-existing non-compliance. The proposed enlargement includes a horizontal extension of the existing noncomplying 1'-2" side yard and the applicant has submitted a 1950 Sanborn map of the immediate area, including the Premises, demonstrating that the Premises were developed with a two-story detached dwelling in approximately the same 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 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 cellar, single-family detached residence that does not comply with zoning regulations for floor area ratio, open space, lot coverage, rear yards, and perimeter wall height, contrary to Z.R. §§ 23-142, 23-47, and 23-461(b); *on condition* that all work and site conditions shall substantially conform to drawings

filed with this application marked "Board Approved March 14, 2022"—Sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.78 FAR (2,036 square feet of floor area), a minimum of 60% open space, a maximum of 40% lot coverage, a rear yard with a minimum depth of 20', two side yards with widths of 1'-2" and 7'-3", and a maximum perimeter wall height of 22', 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. 2021-45-BZ"), shall be obtained within four years, by March 14, 2026;

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 14, 2022.

2021-52-BZ

CEQR #22-BSA-0107Q

APPLICANT – Terminus Group, LLC, for Frank Martarella III, owner.

SUBJECT – Application August 10, 2021 – Variance (§72-21) to permit the construction of a single-family detached home contrary to side yard regulations. R3-1 zoning district.

PREMISES AFFECTED – 134-24 159th Street, Block 12297, Lot 19, 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 August 4, 2021, acting on Alteration Type 1 Application No. Q00495256, reads in pertinent part:

1. ZR 23-461(a) requires two side yards with a total of 13'-0" and, in which one side yards is a minimum of 5'-0". The proposed one family detached residence proposes two side yards

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with a total of 6'-0", in which one side yard is 1'-0". Board of Standards & Appeals approval is required.

2. ZR 23-48 allows reduction of required side yards for one family detached residence for "existing narrow lots"; however, in no event shall the required width of a side yard be less than 5'-0". The proposed one family detached residence proposes a 1'-0" side yard along south property line. Board of Standards & Appeals approval is required.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R3-1 zoning district, the construction of a single-family detached residence, contrary to side yard regulations (Z.R. §§ 24-461(a) and 23-48).

A public hearing was held on this application on January 25, 2022, after due notice by publication in *The City Record*, and then to decision on March 14, 2022. Community Board 12, Queens, recommends denial of this application, stating,

The applicants failed to demonstrate that the new construction would not be a hinderance to the neighbors as well as the community. The Committee finds that the proposed construction would be unduly burdensome to the adjacent neighbors and would not be beneficial to the neighborhood.

Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. The Board also received two form letters of objection this application, citing concerns surrounding overcrowding in the area and an inappropriate side yard waiver.

I.

The Premises are located at the west side of 159th Street, within an R3-1 zoning district, in Queens. With approximately 20 feet of frontage along 159th Street 100 feet of depth, 2,000 square feet of lot area, the Premises are currently vacant.

II.

The applicant proposes to construct an approximately 1,199 square foot (0.59 FAR) two-story with cellar and inhabitable attic, single-family, detached residence that is 14'-0" wide and 42'-11" deep with one side yard measuring 5'-0", the side yard along the southern property line measuring 1'-0", a rear yard measuring 37'-1" at the first floor and above, and a front yard measuring 20'-0". The applicant represents that the side yard along the southern lot line is adjacent to a 9'-4" driveway on the adjacent lot, thereby allotting a total of 10'-4" between the proposed and the existing building on the adjacent lot.

The applicant explains that the lot does not meet the minimum lot area of 3,800 square feet or minimum lot width of 40'-0" requirement for a detached residence within an R3-1 zoning district. The applicant argues that pursuant to Z.R. § 23-33, an undersized zoning lot that was owned separately and individually from all adjoining zoning lots on December 15, 1961 and, at the time of permit, are permitted to construct a residence. Additionally, the applicant cites Z.R. § 23-48, stating that narrow interior zoning lots that

were owned separately and individually on December 15, 1961 are allowed to reduce the five-foot and eight-foot required side yards by four inches every foot the lot is less than the required lot width. Here, the applicant calculates that the 20'-0" lot is 20 feet less than the required 40'-0" lot width, and a reduction of 6.6 feet is permissible.

In the subject R3-1 zoning district, there are two required side yards, measuring a minimum of five feet each, as per Z.R. §§ 23-461(a) and 23-48.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the narrowness of the subject vacant zoning lot—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 provided a vacant lot study demonstrating that of the 21 vacant lots within 1,200 feet of the site (the "Study Area"), 4 (19%) lots are large enough to be developed as of right and 2 (9%) sites are too small to be developable, even with a variance. Of the remaining 15 sites, 12 (80%) are owned with an adjacent lot as a yard/parking or when combined create a buildable development. Therefore, the applicant concludes that there are only 3 (14%) other similarly situated vacant lots within the Study Area. 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a single-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant represents that due to the narrowness of the interior zoning lot, compliance with side yard requirements would not be realistic. In support of this contention, the applicant state that the as-of-right drawings indicate that the resulting width of a residence would be 10'-0", which could not be comfortably inhabited.

C.

The applicant further 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. The applicant maintains that the proposed detached residence would be within the character of the surrounding area, which as a mix of residence types including existing single and two-family detached and semi-detached residences. The applicant states that the development of a 14'-0" wide residence with one substandard side yard would not have an impact on the essential character of the neighborhood as there are already numerous existing

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detached residences in the area that have substandard side yards and are of comparable widths. In support of this contention, the applicant submitted a Substandard Side Yard Study demonstrating that within the Study Area there are 13 existing buildings with between 0'-0" and 3'-0". Additionally, the applicant submitted a Home Width Study depicting the widths of all the residences on the subject block which demonstrated that the proposed 14'-0" of the residence is within the character of the existing residences on the subject block, where the average residence width is 22.8'. The Study further posits that because the residence across the street is 15'-0". Finally, the applicant reiterates that the side yard along the southern lot line would be adjacent to a 9'-4" side yard used as a driveway on the adjacent lot, thereby giving 10'-4" between the proposal and the existing building on the adjacent lot. Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located; would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submitted a 1911 Sanborn Map, which demonstrates that the site has existed since at least then and was not subdivided post 1961. Additionally, the applicant submitted a Separate and Individual Ownership Report which shows that the site has been foreclosed on four times since 1967 and an ownership chart and report that show that the lot has never been in the same ownership with any of the adjoining lots. 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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant argues that the requested variance would permit the construction of a 14'-0" wide, single-family, detached residence that would blend with the character of the residences in the surrounding area. The applicant posits that because the only zoning variance requested is to reduce one side yard from 5'-0" to 1'-0" and reduce the total side yard from 10'-0" to 6'-0". The applicant further represents that all 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.

IV.

At hearing, the Board raised concerns regarding the front yard planting requirements as per Z.R. 23-451, which requires in the subject zoning lot, that 25% of the front yard be planted; clarification of the subject site's relationship with the adjacent neighbor who had been using the site as part of its yard; and the current proposed project's relationship to plans filed for a project in 2007.

In response to the concerns over the planting

requirements, the applicant submitted revised drawings which dimensioned the front yard planting diagram which illustrated the proposed 177 square feet of planting, which exceeds the required 100 square feet at the subject Premises. Additionally, the applicant submitted deeds which state that the adjacent neighbor does not have ownership rights to the subject site and pictures from 2006 and 2011 depicting a fence at the northern subject property lot line, which was subsequently relocated to the southern lot line. Moreover, the applicant explained that plans were filed with Department of Buildings and permits issued in 2007 for a 10-foot-wide detached residence at the subject residence were abandoned because the proposed residence was not habitable, and a Stop Work Order was issued at the Premises because the contractor decided to withdraw from the project.

V.

By correspondence dated January 25, 2022, the FDNY states that it is in receipt of the application and has no objection to the application as a sprinkler system will be installed, as per the plans.

The project is classified as Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No.22BSA0107Q, dated March 14, 2022.

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* the construction of a single-family detached residence, contrary to Z.R. §§ 23-461(a) and 23-48; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 28, 2022" – Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: one side yard along the southern lot line measuring 1'-0" and one side yard along the northern lot line measuring 5'-0";

THAT there be no sleeping in the cellar;

THAT the residence must be entirely sprinklered, as per BSA-approved plans;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2021-52-BZ"), shall be obtained within four years, by March 14, 2026;

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.

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Adopted by the Board of Standards and Appeals,
March 14, 2022.

2020-44-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla City Holdings Corp., owner.

SUBJECT – Application May 22, 2020 – 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.

PREMISES AFFECTED – 2228 Gerritsen Avenue, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for adjourned hearing.

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – 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.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for continued hearing.

2021-15-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLC, for 81 Beaver Development LLC, owner.

SUBJECT – Application February 22, 2021 – Variance (§72-21) to permit the residential conversion of an existing manufacturing building contrary to §ZR 42-10. M1-1 district.

PREMISES AFFECTED – 81 Beaver Street, Block 3135, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #4BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for decision, hearing closed.

2021-19-BZ

APPLICANT – Sheldon Lobel, P.C., for ABIC International Corp., owner.

SUBJECT – Application March 16, 2021 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports contrary to ZR 61-21. C4-2 & C4-3 zoning districts. PREMISES AFFECTED – 36-21 Prince Street, Block 4971, Lot 10, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for decision, hearing closed.

2021-36-BZ & 2020-90-A

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application June 2, 2021 – Variance (§72-21) to permit the development of a two-family detached home (UG 2) contrary to ZR §23-461(a) (side yard), R3X Zoning District. 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 72-01-(g). Lower Density Growth Management Area.

PREMISES AFFECTED – 244 Gansevoort Boulevard, Block 761, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for decision, hearing closed.

2021-44-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for DK Bedford Realty LLC, owner.

SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space), ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3204 Bedford Avenue, Block 7606, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

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PUBLIC HEARINGS
MONDAY-TUESDAY, MARCH 14-15, 2022
2:00 P.M.

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

ZONING CALENDAR

2021-51-BZ

APPLICANT – Akerman LLP, for 37 Ave Richouse LLC,
owner.

SUBJECT – Application August 10, 2021 – Special Permit
(§73-66) to permit the construction of a new building in
excess of the height limits established under ZR 61-21.C4-2
zoning district.

PREMISES AFFECTED – 133-25 37th Avenue, Block
4970, Lot (s) 11, 18, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Shelta, and
Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-
10, 2022, at 10 A.M., for decision, hearing closed.

2021-56-BZ

APPLICANT – Sheldon Lobel, P.C., for 341-353 39th
Street LLC, owner.

SUBJECT – Application August 24, 2021 – Special Permit
(§73-19) to permit the operation of a school (UG 3)
(Brooklyn Prospect Charter School) contrary to ZR §42-00.
M1-2 zoning district.

PREMISES AFFECTED – 341 39th Street, Block 704, Lot
54, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 25-
26, 2022, at 10: A.M., for continued hearing.

Carlo Costanza, Executive Director

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*CORRECTION

This resolution adopted on December 12, 2017, under Calendar No. 263-14-BZ and printed in Volume 102, Bulletin No. 51, is hereby corrected to read as follows:

263-14-BZ

CEQR #15-BSA-092K

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 13, 2016, acting on DOB Application No. 320916648 reads in pertinent part:

1. ZR 23-142: Floor area is contrary to zoning regulations;
2. ZR 23-142: Proposed lot coverage is contrary to zoning regulations;
3. ZR 23-142: Proposed open space is contrary to zoning regulations;
4. ZR 23-45(a): Proposed front yard is contrary to zoning regulations;
5. ZR 23-461: Proposed side yard is contrary to zoning regulations; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3-1 zoning district, the enlargement of an existing single family home that does not comply with floor area, lot coverage, open space, front yard and side yard regulations, contrary to ZR §§ 23-142, 23-45(a) and 23-461; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in *The City Record*, with continued hearings on March 21, 2017 and July 25, 2017, and then to decision on December 12, 2017; and

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

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

WHEREAS, the subject site is located on the northeast corner of Oriental Boulevard and Norfolk Street, in an R3-1

zoning district and a Zone AE Special Flood Hazard Area, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Oriental Boulevard, 200 feet of frontage along Norfolk Street, 2,500 square feet of lot area and is occupied by a one-story detached single-family residence; and

WHEREAS, the applicant proposes a two-story horizontal enlargement and a one-story vertical enlargement resulting in a residence with 2,397 square feet of floor area, a floor area ratio (“FAR”) of 0.95, 42 percent lot coverage, 1,454 square feet of open space, two front yards measuring 1’-1” and 15 feet and two side yards measuring 4’-6” and 31’-2”;

WHEREAS, at the subject site, a maximum FAR of 0.50 (1,250 square feet) is permitted, the maximum lot coverage permitted is 35 percent and a minimum of 1,625 square feet of open space is required pursuant to ZR § 23-142; two front yards at least 10 feet and 15 feet in depth are required pursuant to ZR § 23-45(a); and two sides yards of at least 5 feet and 20 feet are required pursuant to ZR § 23-461; and

WHEREAS, accordingly, the applicant seeks the requested relief; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), that the narrowness of the lot, its corner location and the orientation of the existing detached residence on the lot are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of corner lots located within 1,000 feet of the subject site in an R3-1 zoning district (the “Uniqueness Study Area”) demonstrating that, of the 22 other corner lots in the Uniqueness Study Area (not including the subject site), 5 corner lots (or 23 percent) have a width of less than 30 feet, 2 lots (or 9 percent) have a width of 25 feet, like the subject site and one of those lots obtained relief from the Board to permit the enlargement of the existing residence; and

WHEREAS, in addition, the applicant submits that the existing residence (which has 883 square feet of floor area, 36 percent lot coverage, 64 percent lot coverage, front yards measuring 25’-1” and 1’-1” and side yards measuring 4’-6” and 31’-2”) was constructed at the site in its current location and orientation in or around 1925 and prior to the 1961 Zoning Resolution, which rendered the building non-compliant with regards to minimum lot width, minimum lot area, front yard and side yard regulations, and that the existing building cannot be vertically enlarged without, at a minimum, increasing the degree of these existing non-compliances; further, the applicant asserts that a ~~an~~ ^a ~~as-of-right~~ residence at the subject site would be only 10 feet wide and too narrow to be habitable; and

WHEREAS, in light of the foregoing, the Board finds that the narrowness of the lot, its corner location and orientation of the existing detached residence create unnecessary hardship and practical difficulty in developing

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the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood and, in support of that contention, submitted a study of the floor area ratios of single- or two-family residences within a 400 foot radius of the subject site and in an R3-1 zoning district (the "Neighborhood Study Area") demonstrating that, of the 90 other residences in the Neighborhood Study Area, 77 (or 86 percent) have FARs of more than 0.50 and 19 (21 percent) have FARs between 0.90 and 1.15, including two residences located directly across Norfolk Street from the subject site; the applicant provided a lot coverage study demonstrating that 61 (68 percent) of residences in the Neighborhood Study Area have a lot coverage of greater than 35 percent and 43 (48 percent) of residences have lot coverage of between 41 percent and 59 percent; and

WHEREAS, the applicant additionally prepared a study of the side yard conditions on the subject block demonstrating that, of the two other corner lots on the same block located within an R3-1 zoning district, neither provides side yards compliant with ZR § 23-461 and, among the 54 interior lots occupied by residences—which, pursuant to ZR § 23-461, must provide two side yards, each at least 5 feet wide and having a total width of at least 13 feet—none have two side yards measuring a total of at least 13 feet, 43 (or 77 percent) are located on a side lot line and, thus, have only one side yard, and 31 (57 percent) have one side yard of at least 5 feet wide; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant submits, and the Board finds, that the subject proposal is the minimum necessary to afford the owner relief pursuant to ZR § 72-21(e); and

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

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 15BSA092K, dated October 24, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and

makes each and every one of the required findings under ZR § 72-21 to permit, within an R3-1 zoning district, the enlargement of an existing single family home that does not comply with floor area, lot coverage, open space, front yards and side yards, contrary to ZR §§ 23-142, 23-45(a) and 23-461; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 28, 2017 – Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: a maximum FAR of 0.95 (2,397 square feet of floor area), a maximum of 42 percent lot coverage, at least 1,454 square feet of open space, two front yards measuring at least 1'-1" and 15 feet and two side yards of at least 4'-6" and 31'-2", as reflected on the BSA-approved plans;

THAT mitigation elements required pursuant to ZR § 64-61 shall be provided as determined by DOB;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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

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

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

Adopted by the Board of Standards and Appeals, December 12, 2017.

***The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vol. 107, dated March 25, 2022.**

BULLETIN

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April 8, 2022

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HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, APRIL 25-26, 2022
10:00 A.M. AND 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, April 25, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday April 26, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

433-61-BZ

APPLICANT – Kenny Lee, AIA, for Shin J Yoo, owner.
SUBJECT – Application August 3, 2021 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations which expired on July 18, 2021: R7A zoning district.
PREMISES AFFECTED – 1702-1712 East 16th Street, Block 6798, Lot 13, Borough of Brooklyn.
COMMUNITY BOARD #15BK

286-86-BZ

APPLICANT – Michael Carin, for George Kotsonis, owner; 808 Union Street LLC, lessee.
SUBJECT – Application March 10, 2021 – Extension of Term of a previously approved Variance (72-21) which permitted the operation of a physical cultural establishment (*Slope Fitness*) which expired on April 27, 2019. C1-3/R6A zoning district.
PREMISES AFFECTED – 100 7th Avenue aka 808 Union Street, Block 957, Lot 33, Borough of Brooklyn.
COMMUNITY BOARD #3BK

214-06-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.
SUBJECT – Application April 2, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expires on April 10, 2022; Amendment to permit the conversion of automotive repair bays to accessory convenience store. R3-2 zoning district.
PREMISES AFFECTED – 196-25 Hillside Avenue, Block 10509, Lot 0265, Borough of Queens.
COMMUNITY BOARD #8Q

2017-67-BZ

APPLICANT – Safanya Matavov
SUBJECT – Application November 8, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single-family home which will expire on January 9, 2022. R3-2 zoning district.
PREMISES AFFECTED – 2714 Avenue R, Block 6833, Lot 7, Borough of Brooklyn.
COMMUNITY BOARD #15BK

APPEALS CALENDAR

2020-82-A & 2020-83-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ranchers Best Wholesale Meats, Inc., owner.
SUBJECT – Application October 14, 2020 – Proposed development of a two (1) family dwellings partially located within the bed of a mapped street contrary to General City Law §35. R3A zoning district.
PREMISES AFFECTED – 51 & 53 Cortlandt Street, Block 1039, Lot (s) 39, 37, Borough of Staten Island.
COMMUNITY BOARD #1SI

2021-10-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Victory Boulevard Medical Holdings LLC, owner.
SUBJECT – Application January 19, 2021 – Proposed construction of a one-story commercial building (UG6) not fronting on a mapped street contrary to General City Law §36. M1-1 zoning district.
PREMISES AFFECTED – 3869 Victory Boulevard, Block 2784, Lot 16, Borough of Staten Island.
COMMUNITY BOARD #2SI

2021-20-A & 2021-21-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Winham Holdings LLC, owner.
SUBJECT – Application March 16, 2021 – Proposed development of a three-story residential building within the bed of a mapped street contrary to General City Law §35. R3-1 Lower Density Growth Management Area.
PREMISES AFFECTED – 106 & 108 Winham Avenue, Block 4049, Lot (s) 49, 48, Borough of Staten Island.
COMMUNITY BOARD #3SI

CALENDAR

2022-5-BZY

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

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-04 11th Street, Block 474, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

2021-75-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for LGR 9th Street LLC, owner.

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a major development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-15 9th Street, Block 475, Lot 26, Borough of Queens.

COMMUNITY BOARD #1Q

ZONING CALENDAR

2021-43-BZ

APPLICANT – Greenberg Traurig, LLP, for Harmony Rockaway LLC, owner.

SUBJECT – Application June 29, 2021 – Variance (§72-21) to permit the repurposing of an existing three-story plus cellar building to be occupied with commercial offices (UG 6B) and as of right community facility uses contrary to ZR §32-00. R4-1 zoning district.

PREMISES AFFECTED – 90-91 Beach Channel Drive, Block 16124, Lot (s) 33, 76, 78, Borough of Queens.

COMMUNITY BOARD #14Q

Margery Perlmutter, Chair/Commissioner

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PUBLIC HEARINGS
MONDAY-TUESDAY, MARCH 28-29, 2022
10:00 A.M.

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

PROPOSED RULEMAKING

Board of Standards and Appeals
Proposed Rule-Making Under the City Administrative Procedure Act (CAPA) – Draft Rules
Amending 2 RCNY § 1-08.1, § 1-08.2 regarding Environmental Review Requirements under the State Environmental Quality Review Act and City Environmental Quality Review.

ACTION OF THE BOARD – Laid over to April 11, 2022, at 10 A.M., for decision.

SPECIAL ORDER CALENDAR

CORRECTION: This resolution adopted on March 29, 2022, under Calendar No. 742-70-BZ, is hereby corrected to read as follows:

742-70-BZIII

APPLICANT – RothkrugRothkrug& Spector LLP, for 830 Bay Street Holding LLC, owner.

SUBJECT – Application March 23, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expires May 18, 2021; Amendment to permit a change of use from Automotive Service Station (UG 16B) to Automotive Repair Facility (UG 16B). C1-1/R3-2 zoning district.

PREMISES AFFECTED– 830 Bay Street, Block 2836, Lot 15, 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 –

This is an application for an extension of term for a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the operation of a Use Group (“UG”) 16B automotive service station and expired on May 18, 2021 and an amendment to permit a change of use from automotive service station to automotive repair facility (UG 16B).

A public hearing was held on this application on February 28, 2022, after due notice by publication in *The City Record*, and then to decision on March 28, 2022. Community Board 1, Staten Island, recommends approval of this application.

The Premises are located on the southwest corner of the intersection of Bay Street and Vanderbilt Avenue, within a C1-1 (R3-2) zoning district, in Staten Island. With approximately 125 feet of frontage on Bay Street, 104 feet of frontage on Vanderbilt Avenue, and 12,500 square feet of lot area, the Premises are occupied by a one-story automotive repair facility.

The Board has exercised jurisdiction over the Premises since May 18, 1971, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in a C1-1 zoning district, the erection and maintenance of an automotive service station with accessory uses, on condition that all work conform with drawings filed with this application; and all laws, rules, and regulations applicable be complied with, and substantial construction be completed within one year, by May 18, 1972.

On January 20, 1981, under the subject calendar number, the Board amended the resolution to extend the term for ten years, to expire on May 18, 1991, on condition that the station be operated at all times in such a fashion to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by January 20, 1982.

On November 9, 1982, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the time to obtain the certificate of occupancy to January 20, 1982. On April 9, 1991, under the subject calendar number, the Board further amended the resolution to extend the term of the variance, to expire on May 18, 2001 and to permit a change in the design and arrangement of the existing automotive service station; existing “MPD” pumps to self-serve pumps; the installation of a fire suppression system, mounted on the existing light standard; alteration of the existing sales and office area of the accessory building to accommodate an attendant’s booth and to legalize the elimination of the gasoline pump island and pumps fronting on Vanderbilt Avenue; substantially as shown on revised drawing of the proposed condition received with the application, on condition that there be no parking of vehicles on the sidewalk or in such 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 9, 1992.

On December 2, 1992, under the subject calendar number, the Board further amended the resolution to permit the installation of a new metal canopy over four new concrete pump islands with self service pumps and to allow the altering of the existing accessory building to accommodate an attendant’s booth, on condition that the Premises be maintained in substantial compliance with

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proposed conditions received with the application; and other than as amended, the resolution be complied with in all respects and substantial construction be completed within one year, by December 2, 1993.

On June 14, 1994, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the time to complete substantial construction for nineteen months, to be completed by July 2, 1995. On February 26, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to permit the maintenance of a single storage trailer adjacent to the repair building, which is bordered by a landscape buffer at the southern property line, and to extend the term for ten years from the expiration of the prior grant, to expire on May 18, 2011, 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 May 18, 2011; all landscaping be planted and maintained as per the BSA-approved plans; the above conditions appear on the certificate of occupancy; the site be brought into compliance with the BSA-approved plans and a certificate of occupancy be obtained by February 26, 2009; 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)/configuration(s) not related to the relief granted.

On February 7, 2012, under the subject calendar number, the Board further amended the resolution to extend the term for ten years from the expiration of the prior grant, to expire on May 18, 2021, and grant an extension of time to obtain a certificate of occupancy from the date of this grant, to expire on February 7, 2013, on condition that the term expire on May 18, 2021; the site be maintained free of debris and graffiti; all landscaping be planted and maintained per the BSA-approved plans; the above conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained by February 7, 2013; the asphalt on the site be repaved by June 30, 2012; all conditions from the 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 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 variance having expired, the applicant now seeks an extension. The applicant also seeks an amendment to the variance to modify the term of the grant and to eliminate gasoline sales and change the use to automotive repair only (UG 16B), with no changes to the building or structures on the lot. The applicant represents

that the current owner and operator uses the site for automotive repair only and has no intention to reinstall gasoline tanks and gasoline pumps as permitted under the prior grant. In support of this contention, the applicant submitted the New York City Department of Environmental Conservation (“DEC”) closure reports for the tanks at the subject site. The applicant further represents that the owner provides automotive repair services within the existing building, with cars awaiting service parked within the lot. Moreover, the applicant states that the hours of operation are Monday to Friday, 8:00 a.m. to 5 p.m., with approximately five to seven cars serviced daily.

At hearing, the Board discussed the previously approved plan set which indicated that the width of the building at 43'-3" and was located 12'-9" from the property line, noting that the revised plan demonstrated that these measurements were erroneous. The Board explains that the interior dimension of the building, specifically the working area, measures 41'-10", and there's a +6-foot-wide lavatory, thereby exceeding 43'-3". The Board states that although the building is 12'-9" from the property line, the correct width of the building is 57'-10". The applicant demonstrated that the building has not changed by submitting images of the building from 2011 and 2020, in which the doorways and the space between doorways appear identical.

Based upon its review of the record, the Board has determined that the extension of term of the variance and a amendment to eliminate gasoline sales and change the use to automotive repair only appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 10, 2001 as amended through February 7, 2012, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on May 18, 2031, and to eliminate gasoline sales and to change the use to automotive repair only (UG 16B), *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved March 29, 2022” – Three (3) sheets; and *on further condition*;

THAT the term of the variance shall expire on May 18, 2031;

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

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

THAT the asphalt shall be skim coated;

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. 742-70-BZ’), shall be obtained within two years, by March 29, 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

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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 29, 2022.

290-99-BZIV

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Almi Greenwich Associates LLC, owner; Equinox Greenwich Avenue, Inc., lessee.

SUBJECT – Application December 13, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of a physical cultural establishment (Equinox) which expires on March 28, 2020. C1-6/R6 zoning district.

PREMISES AFFECTED – 97 Greenwich Avenue, Block 615, Lot 29, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a previously approved variance, granted pursuant to Z.R. § 72-21, permitting the operation of a physical culture establishment (“PCE”) and expired on March 28, 2020.

A public hearing was held on this application on February 28, 2022, after due notice by publication in *The City Record*, and then to decision on March 29, 2022. Community Board 2, Manhattan, waived its recommendation of this application.

The Premises are located at the southwest corner of the intersection of Greenwich Avenue and West 12th Street, within a C1-6 (R6) zoning district, in Manhattan. With approximately 67 feet of frontage along Greenwich Avenue, 118 feet of frontage along West 12th Street, and 8,612 square feet of lot area, the Premises are occupied by an existing four-story, plus cellar, commercial building.

The Board has exercised jurisdiction over the Premises since March 28, 2000, when, under the subject calendar number, the Board granted a variance, for a term of ten years, to permit, in a C1-6 (R6) zoning district, within the Greenwich Village Historic District, the proposed conversion and enlargement of an existing two-story brick building movie theater into a four-story physical culture establishment, contrary to Z.R. § 32-10, on condition that all work substantially conform to drawings as they apply to the objections noted and filed with the application; the terms of the variance be limited to ten years from the date of the grant, to expire on March 28, 2010; the hours of operation

for the physical culture establishment be limited to Monday through Thursday, 6:00 a.m. to 11:00 p.m., Friday, 6:00 a.m. to 10:00 p.m., Saturday and Sunday 8:00 a.m. to 8:00 p.m.; the proposed wet sprinkler system and interior fire alarm be connected to a Fire Department approved central station; 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 Z.R. § 72-23.

On August 14, 2001, under the subject calendar number, the Board amended the resolution to permit the installation of an accessory swimming pool at the cellar level of the establishment, on condition that the hours of operation be limited to Monday through Thursday, 6:00 a.m. to 11 p.m., Friday, 6:00 a.m. to 10:00 p.m., Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; a wet sprinkler system with interior fire alarms connected to a Fire Department approved central station be installed throughout the entire establishment; the above conditions appear on the certificate of occupancy; the Premises be maintained in substantial compliance with the proposed conditions plans submitted with the application; the development, as approved, is subject to verification by the Department of Buildings for compliance with any applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; the resolution be complied with in all respect; and substantial construction be completed in accordance with Z.R. § 72-23.

On September 14, 2010, under the subject calendar, the Board further amended the resolution to grant an extension of the term of the variance for ten years from the expiration of the last grant, to expire on March 28, 2010 and to permit the noted change in the hours of operation, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the term of the grant expire on March 28, 2020; the hours of operation be: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.; the above conditions be listed on the certificate of occupancy; all conditions from resolutions 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; 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 grant having expired, the applicant now seeks an extension and to eliminate the term of the grant. The applicant represents that the Premises continue to comply with all conditions of the Board’s resolution and that no changes in the physical plan, floor area, or operation of the establishment are proposed. The applicant states that

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it is the sole tenant of the subject building, with the cellar (7,508 exempt square feet) containing a swimming pool, treatment rooms, laundry, employee lounge, and mechanical space; the first floor (8,330 square feet) containing the reception area, locker rooms, and retail and office space; and the second (8,292 square feet), third (8,291 square feet) and fourth (7,075 square feet) floors containing the exercise areas for the establishment. Furthermore, the applicant declares that the subject Premises have approved interior fire alarm and sprinkler systems and continues to comply with all pertinent accessibility requirements. Additionally, the applicant states that no changes to the operator or operation are proposed, with open hours remaining Monday to Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., Saturday and Sunday, 8:00 a.m. to 9:00 p.m.

At hearing, the Board raised concerns about the applicant's compliance with the terms of the prior grants and the current conditions inside the health and culture establishment. Additionally, the Board noted that there were inconsistencies between the gross floor area shown on the applicant's drawings and the measurements in the Statement of Facts and cover letter, as deductions of mechanical space from the cellar had resulted in reduced floor area in some material but that information was not uniformly represented in the applicant's submissions. In response, the applicant submitted photos of the interior conditions of the facility and a compliance chart stating the terms of the prior grant and where in the application material proof of compliance may be found. Furthermore, the applicant amended the drawing list and area chart on the existing plan set to correspond to measurements given in its cover letter and Statement of Facts.

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 March 28, 2000 as amended through September 14, 2010, so that as amended this portion of the resolution shall read: "to eliminate the term of the grant and limit the use at the subject Premises to a health and fitness establishment, *on condition*:

THAT the hours of operation shall be limited to Monday through Friday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 290-99-BZ"), shall be obtained within two years, by March 29, 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 29, 2022.

1069-27-BZ

APPLICANT – Glen V. Cutrona, AIA, for Frank Mormando, owner.

SUBJECT – Application March 2, 2021 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 2021. C1-2/R5 zoning district. PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for continued hearing.

581-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Salamander Realty, owner.

SUBJECT – Application January 25, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance permitting the operation of a trade school, meeting hall and offices (Use Groups 6 & 9) which expired on December 21, 2021. R5 zoning district.

PREMISES AFFECTED – 24-01 to 24-11 36th Avenue, Block 338, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for decision, hearing closed.

519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for BP Products North America, Inc., owner.

SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board's Rules of Practice and Procedures. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.

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COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A., for continued hearing.

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

1181-80-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Sai Yan Chen, owner.

SUBJECT – Application May 5, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted a four story office and warehouse building which expired on April 7, 2021. R6 zoning district.

PREMISES AFFECTED – 62-07 Woodside Avenue, Block 1294, Lot 20, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for decision, hearing closed.

406-82-BZVII

APPLICANT – Eric Palatnik, P.C., for Adolph Clausi, owner.

SUBJECT – Application January 7, 2022 – Extension of Time to Obtain a Certificate of Occupancy 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 November 11, 2021. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for decision, hearing closed.

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corp., owner.

SUBJECT – Application May 3, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 1, 2020; Waiver of the Board's Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

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

171-97-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Rocco Sacco, owner.

SUBJECT – Application August 31, 2021 – Extension of Term of a previously approved variance which permitted the operation of a trade school (UG 9), eating and drinking establishment (UG 6), retail (UG 6) and accessory uses which expired on October 20, 2018; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 65-01 Kissena Boulevard, Block 6742, Lot 10, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for adjourned hearing.

201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking which expired on August 15, 2021; Waiver of the Board's Rules of Practice and Procedures. R3-2/C2-3 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, Block 11712, Lot 28, Borough of Queens.

COMMUNITY BOARD #10Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

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ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

72-11-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.

SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2020-58-A & 2020-59-A

APPLICANT – Eric Palatnik, P.C., for Kenneth Chapman, owner.

SUBJECT – Application July 17, 2020 – Proposed construction of a single-family home on a property not fronting on a mapped street contrary to General City Law (“GCL”) 36. R1-2 zoning district.

PREMISES AFFECTED – 10, 12 Jasmine Way, Block 695, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

2021-2-A thru 2021-7-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 99-21 Hollis Avenue LLC, lessee.

SUBJECT – Application January 13, 2021 – Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 99-21 Hollis Avenue aka 191-01/191-09/191-13/192-01/192-05/192-13 Hollis Avenue, Block 10839, Lot (s) 1, 50, 49, 48, 47, 46, Borough of Queens.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for continued hearing.

2021-73-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Chelsea 24th Street LLC, owner.

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-6 zoning district.

PREMISES AFFECTED – 113 West 24th Street, Block 800, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

2022-6-BZY

APPLICANT – Herrick, Feinstein LLPC, for Griffon Gansevoort Holdings LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning.

PREMISES AFFECTED – 55 Gransevoort Street, Block 644, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2021-15-BZ

CEQR #21-BSA-033K

APPLICANT – Kramer Levin Naftalis & Frankel LLC, for 81 Beaver Development LLC, owner.

SUBJECT – Application February 22, 2021 – Variance (§72-21) to permit the residential conversion of an existing manufacturing building contrary to §ZR 42-10. M1-1 district.

PREMISES AFFECTED – 81 Beaver Street, Block 3135, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #4BK

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 11, 2022, acting on Alteration Type I Application No. 321595467, reads in pertinent part:

- 42-10: Proposed Use Group 2 in this M1-1 Zoning District Obtain Zoning Variance from NYC Board of Standards and Appeals (BSA)
- 44-52: Loading berths are required for proposed commercial use in this M1-1 Zoning District; no loading berths are provided. Obtain Zoning Variance from NYC Board of Standards and Appeals (BSA)

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This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an M1-1 zoning district, the conversion of an existing manufacturing building to residential use, contrary to Z.R. § 42-10, and permitted commercial use without required off-street loading, contrary to Z.R. § 44-52.

A public hearing was held on this application on October 4, 2021, after due notice by publication in *The City Record*, with continued hearings on December 14, 2021, and March 15, 2022, and then to decision on March 28, 2022. Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 4, Brooklyn, recommends denial of this application, stating that the applicant made a high-risk investment that did not work out and should be viewed as a self-created hardship. The Community Board states that the proposal for residential conversion neither supports community needs nor is it in line with the recent planning process reflected in the Bushwick Community Plan that opposes land use changes that replace manufacturing districts with residential rezonings. The Board received one form letter in support of this application.

I.

The Premises are located at the northeast corner of the intersection of Beaver Street and Belvidere Street, within an M1-1 zoning district, in Brooklyn. The Premises are an irregular, L-shaped zoning lot with approximately 152 feet of frontage along Beaver Street, 137 feet of frontage along Belvidere Street, 10,652 square feet of lot area and are currently occupied by three vacant buildings, rising approximately four stories on Beaver Street and two and three stories on Belvidere Street. The Premises are designated by the Landmarks Preservation Commission as an individual landmark, the “William Ulmer Brewery: Main Brewhouse and Addition” and “William Ulmer Brewery: Engine and Machine House.”

The Board has exercised jurisdiction over the Premises since September 10, 2002, when, under BSA Cal. No. 61-02-BZ, the Board granted a variance, under Z.R. § 72-21, to permit the proposed conversion of a portion of the second floor and the entirety of the third and fourth floors of an existing four-story manufacturing building, into sixteen residential units, located in an M1-1 zoning district, contrary to Z.R. § 42-00, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; an automatic wet-pipe sprinkler system connected to a Fire Department approved Central Station be installed throughout the building; 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.

II.

The applicant states that the Premises consists of three buildings that were developed as follows: the brew house (“Brew House”), which was constructed in 1872 with approximately 90 feet of frontage on Beaver Street and 50 feet of frontage on Belvidere Street. The Brew House was divided into two separate four-story structures (totaling approximately 54 feet in height), which accommodated the specific needs of beer production. A four-story storage addition was added to the Premises’ Beaver Street frontage in 1881 (“Storage Addition”), completing the Premises’ existing Beaver Street frontage. Both the Brew House and the Storage Addition have a shallow floor plate depth of 46'-7". The Premises was further enlarged with a third section in 1885 with the addition of a two- and three-story Boiler and Machine House (“Boiler and Machine House”) facing Belvidere Street, with an even more shallow floor plate depth of 32'-2" feet. The Premises was also developed with two and a half levels underground storage in the in the cellar.

The applicant seeks to convert the Premises to permit residential use on the second through fourth floors, penthouse level, and conforming commercial or light manufacturing uses on the ground floor in the Boiler and Machine House and ground floor and cellar levels in the Brew House and Storage Addition.

Originally, the applicant proposed a total of 48 residential units, with a range of studio, one- and two-bedroom units; mezzanines totaling 836 square feet to be added to the ground floor units in the Boiler and Machine House; and a new penthouse totaling 1,433 square feet to be added to the Brew House and Storage Addition. The applicant noted that with the penthouse, the height of the Building would increase from 53'-8" to 71'-7". Furthermore, the applicant stated that the main residential lobby would be accessed from Beaver Street, and a new passenger elevator would provide access to the residential units on floors two through four and the new penthouse level. The applicant further described that the elevator would be located at the wall that divides the Brew House from the Storage Addition, allowing the elevator to make all of the “half stops” where the floors between the two sections do not align. Moreover, the applicant represented that a second residential lobby would be located at the western end of the Boiler and Machine House, and a new passenger elevator would access the four units on the second floor in this wing. Additionally, the applicant stated that the below-grade commercial spaces would be accessed via a third passenger elevator, which would be located off of a commercial lobby on Belvidere Street and would only connect the ground floor and cellar levels. As for the exterior, the applicant stated that it planned to restore the Building’s brick façade and replace the current double hung windows with new windows, matching the historic window configuration, operation, material, details and finish; windows that had

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been bricked up over time would also be reopened; fire escapes and other non-historic attachments would be removed. Finally the applicant represented that the new penthouse and elevator bulkhead, which would be added to the top of the Brew House and Storage Addition, would be set back to be minimally visible from surrounding streets.

Over the course of the hearings the Board questioned the viability of commercial use at the Premises and whether the applicant's proposal met the minimum variance finding. Additionally, the Board questioned the condition of the existing Premises, specifically with regard to proposed construction costs and whether the proposed penthouse was required for the applicant to make a reasonable return on its investment.

In response, the applicant now proposes to develop the lesser variance of residential use located on the second through fourth floors, penthouse level, and on the ground floor in the Boiler and Machine House, and conforming commercial or light manufacturing uses to be located on the ground floor and cellar levels of the Brew House and Storage Addition with 9,322 square feet of commercial floor area and 28,111 square feet of residential floor area. The applicant proposes to construct a total of 34 residential units, with a range of studio, one-, and two-bedroom units. The applicant states that a mezzanine totaling 272 square feet would be added to the ground floor units in the Boiler and Machine House, and a new penthouse totaling 1,281 square feet would be added to the Brew House and Storage Addition. The applicant represents that the new penthouse and elevator bulkhead, which would be added to the top of the Brew House and Storage Addition, would be setback to be minimally visible from surrounding streets, and the height of the building would increase from 53'-8" to 71'-7"; no loading bays are proposed.

In the subject M1-1 zoning district, residential use is not permitted (Z.R. § 42-10). Additionally, per Z.R. § 44-52, one loading bay is required for certain commercial uses and light manufacturing uses that occupy 8,000 square feet in floor area or greater and an additional loading bay is required for the next 17,000 square feet of floor area; one loading bay is required for the first 25,000 square feet of office use floor area. As such, the applicant seeks the subject relief.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, unique circumstances associated with the existing built condition, including the shallow site which makes horizontal enlargement impossible, the obsolescence of the existing building, and its designation as an individual New York City landmark and a building listed on the State and National Register of Historic Places—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 states that, due to the Premises' construction in three distinct segments, the Premises, essentially, functions as three separate buildings. The floor plates are misaligned between buildings, in some areas up to seven feet difference, and the Premises does not contain the contiguous, regularly-shaped floor plates and expansive windows that office tenants seek. Additionally, the applicant states that the Premises are not located in an established, or even emerging, office district. Further, the floor to ceiling heights are also as low as 9'-6", and the column spacing is approximately 12 feet. The applicant contends that removal of the existing floor slabs and shifting or removing columns is further complicated by the masonry vault construction in the lower sub-cellar level: shifting columns away from the apex of an arch would destabilize the structure without a robust means of supporting the arch with structural steel. Furthermore, because the building is listed on the State and National Register of Historic Places and, if renovated pursuant to U.S. Secretary of the Interior's Standards for Rehabilitation as reviewed by the State Historic Preservation Office ("SHPO"), it can benefit from Historic Tax Credits. Consequently, much of the existing building fabric, such as its floors and supporting structures, may not be removed.

The applicant provided a uniqueness study demonstrating that the existing building is also unique among commercial and manufacturing buildings in the surrounding area. The study identified the properties that contain buildings with three or more stories and are occupied primarily by conforming manufacturing and/or commercial uses within an approximately 1,000-foot radius (bounded by Broadway, Flushing Avenue, Myrtle Avenue, and Evergreen Avenue) that surrounds the zoning lot. The study excluded buildings with less than three stories, as the applicant contends that one- and two-story manufacturing or commercial buildings are more easily converted to permitted warehouse/storage, retail, or single tenant office uses and are distinguishable from the subject Premises. Of the 651 sites within the study area, five sites (0.77%) contain buildings that have three or more stories and are occupied by primarily manufacturing uses, and five properties contain buildings that have three or more stories and are occupied by primarily commercial uses. Of the five manufacturing buildings, four have larger and more regularly shaped floor plates than the subject building; four provide on-site parking; and none of the five manufacturing buildings are landmarked. Of the five commercial buildings, three of five were purpose-built for commercial use, all are located on Broadway, a commercial thoroughfare, are located closer to public transportation than the subject Premises, and none are landmarked.

Further, while the applicant does not contend that the Premises' landmarked designation is a unique condition, the applicant states that the designation does not allow significant alteration of the historic façade to accommodate as-of-right uses. The applicant argues that this limitation

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prevents alteration of the historic windows and door openings that, at present, are not conducive to as-of-right retail uses. Additionally, the applicant states that creating new vehicular entrances to the Premises for off-street loading bays would require significant alterations to the Premises' historic façade: the existing entryways, which split the narrow floor plate of the Boiler and Machine House, are not adaptable for reuse as there are small, disconnected spaces. To this point, the applicant asserts that if the northern half of the Boiler and Machine House were occupied by commercial instead of residential use, the shallow floor plate depth of 32'-2" would not allow for sufficient space for internal connection between loading bay and the commercial spaces in the Brew House and Storage Addition. This would isolate loading activities from the commercial spaces in the Brew House and Storage Addition portion of the Premises—goods would then need to be transported out of the Premises and onto the sidewalk, vitiating the benefit of off-street loading.

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.

B.

Next, the applicant submits that in the absence of the grant of the variance requested in this application, it would not be possible for the subject Premises to provide a reasonable return on investment. In support of this contention, the applicant submitted a financial report, which used the capitalization of income method to determine the value of the subject building for both the as-of-right development and the proposed project. The report concludes that the as-of-right development would be significantly more costly to construct than it would be worth upon completion. The applicant states that as-of-right development of the Premises would create 10,652 square feet of manufacturing or commercial floor area, and 25,564 square feet of community facility use. Based on the report, the proposed project, as modified to provide commercial at the entire first floor and cellars, 34 dwelling units and the second through fourth floors, and a new residential penthouse addition, however, contains slightly more value (\$32,657,000) than its total development cost (\$32,570,000), whereas the as-of-right development has a total cost of \$28,248,000, and a value of \$23,595,000, creating a negative return.

Accordingly, the Board finds that because of the unique physical condition at the subject Premises, there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the Zoning Resolution would bring a reasonable return.

C.

The applicant further 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. The applicant states that the proposed residential conversion

of the subject building would be compatible with the surrounding neighborhood, which is predominantly residential in character. In support of this contention, the applicant submitted radius maps which demonstrate that one- and two-family residences, and three- to six-story multiple dwellings are located throughout the surrounding streets, including directly opposite the subject Premises on the north side of Beaver Street and the east side of Belvidere Street. The applicant argues that the residential conversion of the Premises would be more compatible with the surrounding neighborhood than permitted commercial and manufacturing uses, which typically generate more noise and quality of life issues when located in and immediately adjacent to residential neighborhoods. Furthermore, the applicant represents that the proposed exterior restoration, renovation, and preservation work would significantly benefit the pedestrian perception of the subject building and enhance the streetscape.

Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located; would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the need for the requested variance arises from several factors related to the existing built condition of the zoning lot, the history of development, and regulatory conditions. The applicant first point to the fact that the existing building was originally constructed between 1872 and 1885 with unique interior spaces that were designed for beer manufacturing. The applicant declares that this interior configuration, which consists of narrow floor plates, varying floor heights, and narrow spaces bounded by load bearing walls, is obsolete for conforming manufacturing and commercial uses. The applicant states that misaligned floors result in the need for more elevator and stair cores than would otherwise be needed; the existing building delegates the locations of vertical circulation cores and mechanical shafts, which result in awkward layouts and inefficient circulation. Furthermore, the applicant posits that the subject Premises' designation as an individual landmark prevents the building from being demolished and replaced with a new building that could be specifically designed for an as-of-right use and constrains the ability to make changes to the exterior of the building including creating larger windows that could make the building more attractive to commercial tenants. 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 notes that the variance request is the minimum necessary to afford relief at the Premises. The applicant argues that its financial report concludes that the

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as-of-right development would be significantly more costly to construct than it would be worth upon completion. Moreover, the applicant states that the proposed project contains more value than its total development cost, but only by a differential of \$87,000.

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.

Over the course of hearings, the Board raised concerns about the applicant's uniqueness argument, the assumptions made in the financial reports, and whether or not the originally proposed project that provided commercial use only in the cellars and a residential penthouse unit, was the minimum variance. Specifically, the Board questioned applicant's assertion that the building's floors could not be aligned, thus eliminating the need for multiple elevator and stair cores and accommodating as-of-right uses. The Board also questioned the need for excess mechanical spaces and oddly-shaped mechanical shafts that block clear configuration of commercial spaces in the as-of-right plans. The Board further questioned the applicant's financial reports which contained several discrepancies such as price projections for the renovation and restoration of the existing building as equal to the construction of a new building; higher than industry standard pricing for construction materials; incorrect calculation of prices, amounts, percentages, and quantities of construction materials; the improper usage of Historic Tax Credits ("HTC") for the as-of-right proposal, lesser variance, and proposed scenarios; unsuitable comparables for the residential units; and changes in the capitalization rate, leading to the applicant's assertion that the proposed project is the minimum variance.

In response, the applicant revised the financial report to show the penthouse version of the lesser variance that retains the residential penthouse but provides retail at both the Belvidere Street and Beaver Street first floor and cellar levels is the minimum variance with a return of 5.93%, using a blended capitalization rate for the residential and retail uses. The Board stated that since Belvidere Street is closer to Broadway, a pedestrian retail strip, that fact cancels out the shallowness factor that the applicant argued lowers the rental value of the Belvidere Street retail portion; the Board also stated that pedestrians will likely walk around the corner to get to the unique retail spaces along Beaver Street. Therefore, the applicant revised the Beaver Street and Belvidere Street retail uses to be similarly valued.

Furthermore, the Board members conducted a site visit to the Premises which further clarified the scope of restoration and intervention that is required to adaptively use the building. To begin, the Board stated that the Commissioner site visit verified the significant level change between the last bay on Beaver Street and the adjacent bay, which is the only bay on Beaver Street where the floors cannot be made to align. The applicant proposes to address this issue in the plan with ramps and elevator half-stops. Additionally, the Board noted that the existing wood floors, which float above concrete in portions of the building, will

be completely removed and a new polished concrete topping will be added to align the concrete floor heights. The corner bay, however, contains flooring which is entirely wood on wood joists and cannot be made to align with the adjoining building section, but will be replaced completely with new wood flooring. Furthermore, the visit clarified the applicant's proposed use of vertical shafts for mechanical systems and its proposed location of the circulation cores that take advantage of the existing openings in the brick arches.

Throughout the course of hearings, the applicant contended that the roof of the building would need to be completely replaced. Pursuant to Local Laws 92 and 94 of 2019, all new buildings and alterations of existing buildings where the entire existing roof deck or roof assembly is being replaced must provide a sustainable roofing zone covering 100% of the roof. As a result of the site visit, the Board better understood the extent of the roof replacement at the building. The current roof slopes toward the parapet and serves no other function than to act as a roof but would need to be replaced to accommodate the weight bearing needs of other activities and to improve ceiling heights in the residential units below. Additionally, due to the use of tar for waterproofing, the existing parapet on the Belvidere Street side has decayed, causing damage to the decorative brickwork of the façade.

The Board questioned whether the penthouse addition represented the minimal variance. The applicant contends, and the Board accepts, that the proposed penthouse addition is needed for planning and architectural reasons. Specifically, the penthouse is proposed to house and conceal the stair floor and elevator bulkheads, a makeup-air system to service the three subterranean levels of the Premises, as well as cellular equipment. The Board recognizes that LPC prefers to amass rooftop mechanical equipment into building elements, as opposed to spreading it out on the roof. The removal of the proposed penthouse would jeopardize the applicant's HTCs, as well as require the relocation of the concealed cellular equipment to be attached to the side of the Premises, which LPC will not permit. To this end, removal of the proposed penthouse would likely still require the applicant to construct a penthouse-equivalent space to house the mechanicals without the ability to generate any revenue from the space.

V.

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. 21BSA033K, dated March 28, 2022. 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

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and pedestrians; air quality; noise; or public health.

By correspondence dated January 12, 2021, the Landmarks Preservation Commission (“LPC”) represents that the proposed project would not have any potential for significant adverse impacts on archaeological resources. The correspondence notes that the property is a NYC Landmark and appears eligible for the State/National Register. LPC notes that the executed LPC permit must be attached to the Final EAS.

By correspondence dated November 19, 2021, LPC states the following: “pursuant to Section 25-307 of the Administrative Code of City of the New York, the LPC issued Certificate of Appropriateness 21-02153 (LPC 21-02153) on April 19, 2021, approving a proposal for the removal of bulkheads, skylights, and a telecommunications equipment platform at the roof, in conjunction with the reconstruction the roof framing construction of a one-story rooftop addition; installation of mechanical enclosure, and a generator, and HVAC equipment within enclosures; removal of a metal shutter; replacement of windows and window assemblies; modification of masonry openings, and installation of windows and new brickwork; reopening of a sealed masonry opening and installation of a door assembly; and a roll-down security gate with new doors; reopening and enlargement of sealed masonry openings, and installation of doors and a door assembly; removal of a roll-down security gate, and sealing the opening; replacement of garage doors; construction of a barrier-free access ramp, stairs, and platform; installation of light fixtures; enlargement of a masonry opening, and installation of a door assembly, and a platform and staircase at the subject Premises. Additionally, the Commission issued Miscellaneous/ Amendment 21-08269 (LPC 21-08269) on April 22, 2021, to incorporate additional filing drawings detailing the approved work.

Subsequently, on October 14, 2021, the applicant submitted a revised presentation package in connection with the NYC Board of Standards and Appeals to allow residential use of the building. As part of that BSA application, the applicant is proposing to incorporate modifications to the proposal, including changing the configuration of a proposed door assembly at the third westernmost opening at the first floor of the north (Beaver Street) façade, to feature two operable doors, instead of one (1): fixing the pair of proposed arch-headed wood doors at the first floor of the north façade in an open position, modifying a sealed masonry opening at the first floor of the east (Belvidere Street) façade, by removing plain brickwork and installing a door, instead of restoring the sealed masonry opening and installing a double-hung window; changing the configuration and operation of a pair of proposed in-swing garage door assemblies at the first floor of the east façade, by removing brick infill and installing new windows; and changing eight doors at the proposed rooftop addition to fixed windows, as documented in a revised presentation booklet, titled “Changes Required for BSA Application,” dated October 14, 2021.

The LPC staff has reviewed the proposed changes to the approved design and believe the changes are in keeping

with the intent of the original approval and could be approved by the staff upon review and approval of the Final DOB filing drawings. Once the Commission staff has received the final DOB drawings showing these changes, and any others that the BSA might require, the staff will review and, if the changes are still in keeping with the intent of the original approval and/or comply with the Commission’s Rules, staff will issue a Miscellaneous/Amendment approving the changes.”

By letter dated March 11, 2022, the New York City Department of Environmental Protection (“DEP”), Bureau of Environmental Planning and Analysis states that it has reviewed the EAS, dated February 2022, and has the following comments:

Air Quality:

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 included air quality, HVAC and nearby industrial sources.

Noise:

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. Furthermore, based on the proposed, the project would not result in significant adverse impact for noise. Furthermore, based on the projected ambient noise levels on the proposed project, acceptable interior noise levels are achieved using the typical construction materials, and no additional attenuation is required. The assessment included noise from mobile and nearby playground sources.

By letter dated May 28, 2021, the New York City Department of Environmental Protection (“DEP”) states that it has reviewed the EAS and Phase I and determined that a Phase II Environmental Site Assessment is necessary to identify/characterize the subject site;

In response, the applicant requests that an (E) designation (E-668) be placed on the subject site for hazardous materials pursuant to ZR 11-15. The (E) designation shall ensure that testing and mitigation will be provided as necessary under the oversight of the Mayor’s Office of Environmental Remediation before any future development and/or soil disturbance.

By correspondence dated December 3, 2021, DEP indicates they have reviewed the e-designation request and they do not have any further comments.

By letter dated March 15, 2022, the New York City Department of Transportation (“DOT”) states that following the CEQR Technical Manual Level 1 (Trip Generation) and Level 2 (Trip Assignment) screening assessments, traffic analysis was screened out and pedestrian analysis was conducted for the weekday PM and Saturday peak hours at two sidewalks in front of the project site. Based on the review of the EAS and supplemental information including Level 1 and Level 2 screening assessments, DOT concurs with the lead agency’s determination that a detailed traffic

MINUTES

analysis is not warranted. In addition, based on the review of the pedestrian level of service (“LOS”) analysis, we have determined that proposed action would not result in any significant adverse pedestrian impacts. As agreed to by the applicant, three existing curb cuts along the site’s frontage, including two on the west side of Belvidere Street and one on the south side of Beaver Street will be removed at the applicant’s expense.

By correspondence dated August 16, 2021, the New York City Department of Parks and Recreation indicated they have reviewed the EAS for open space and have no further comments.

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* the residential conversion of an existing manufacturing building, contrary to Z.R. §§ 42-10 and 44-52; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Board Approved March 24, 2022” — Nineteen (19) sheets; and *on further condition*:

THAT construction shall proceed in accordance with Z.R. § 72-23;

THAT an (E) designation (E-668) shall be maintained on the site to ensure proper hazardous materials remediation;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2021-15-BZ”), shall be obtained within four years, by March 28, 2026;

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 28, 2022.

2021-32-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yehuda Eckstein, owner.

SUBJECT – Application May 24, 2021 – Special Permit (§73-622) to permit the enlargement of an existing home contrary to ZR §23-141 (FAR and OSR); ZR §23-47 (rear yard) and ZR §23-461(a) (side yard). R2 zoning district.

PREMISES AFFECTED – 1471 East 26th Street, Block 7680, Lot 18, 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 29, 2021, acting on DOB Alteration Type I Application No. 322093541, reads in pertinent part:

- “1-Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted .50
- 2- Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150%
- 3- Proposed plans are contrary to ZR 23-461(a) in that the proposed minimum side yard is less than the required 5'-0"
- 4- Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0".”

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, with cellar, single-family semi-detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”) (Z.R. § 23-141), side yards (Z.R. § 23-461(a)), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on January 11, 2022, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2022, and then to decision on March 28, 2022. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding area. Community Board 14, Brooklyn, recommends approval of this application. The Board received five form letters in support of this application.

The Premises are located on the east side of East 26th Street, between Avenue N and Avenue O, within an R2 zoning district, in Brooklyn. With approximately 22'-6" of frontage along East 26th Street, 100 feet of depth, and 2,250 square feet of lot area, the Premises are occupied by an existing two-story, with 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

MINUTES

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 single-family semi-detached residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, with cellar, single-family semi-detached residence with approximately 1,248 square feet of floor area (0.56 FAR), 127% OSR, two side yards with widths of 0'-0" and 6'-1", a front yard with a depth of 17'-8", and a rear yard with a depth of 39'-10". The applicant seeks to horizontally enlarge the existing building resulting in a two-story, with cellar, single-family semi-detached residence with approximately 1,883 square feet of floor area (0.84 FAR), 67% OSR, two side yards with widths of 0'-0" and 6'-1", a front yard with depths of 17'-8" at the first floor and 24'-0" above, and a rear yard with a depth of 20'. The applicant proposes to increase the floor area at the first floor, from 670 square feet to 987 square feet, and second floor, from 579 square feet to 896 square feet.

At the Premises, pursuant to Z.R. §§ 23-141, 23-461(a), and 23-47, a maximum of 0.50 FAR is permitted, a minimum of 150% OSR is required, two side yards, with minimum widths of 5 feet and 13 feet of total side yard, are required, and a rear yard with a minimum depth of 30 feet is required. 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 97 residences (92%) have an FAR of 0.5 or greater, ranging from 0.51 to 1.30, 14 of which have an FAR of 0.84 or greater. With respect to OSR, the applicant submitted a lot coverage study demonstrating that 83 residences (78%) within the Study Area have greater than 35% lot coverage, ranging from 36% to 60%. The applicant submitted a rear yard study of the subject block demonstrating that 27 residences (49%) have rear yards with less than 30 feet of depth, ranging from 29 feet to 18 feet. The applicant submitted a photographic streetscape of the subject block demonstrating that the proposed enlarged residence is consistent with the built character of the immediate area. The applicant represents that there are no proposed changes to the perimeter wall height or sky exposure plane of the Premises. The proposed enlargement includes a horizontal extension of the existing noncomplying 0'-0" and 6'-1" side yards, and the applicant has submitted a 1930 Sanborn map of the immediate area, including the Premises, demonstrating that the Premises were developed with a semi-detached dwelling in approximately the same orientation as the Premises are occupied today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances. With respect to the enlargement of the Premises at the first and second floors in the rear yard, the Board notes that in consideration of this existing semi-detached building with no expansion capabilities in the front yard or side yard, a 20-foot year

yard is acceptable.

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 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 cellar, single-family semi-detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, 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 substantially conform to drawings filed with this application marked "Board Approved March 28, 2022"—Sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.84 FAR (1,883 square feet of floor area), a minimum of 67% OSR, two side yards with minimum widths of 0'-0" and 6'-1", and a rear yard with a minimum depth of 20', 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 exterior insulation finishing system ("EIFS") 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. 2021-32-BZ"), shall be obtained within four years, by March 28, 2026;

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.

MINUTES

Adopted by the Board of Standards and Appeals,
March 28, 2022.

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for
Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance
 (§72-21) to permit the construction of three-story plus cellar
 residential building contrary to ZR §42-00. M1-1 zoning
 district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162,
 Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to July 18-
 19, 2022, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to July 18-
 19, 2022, at 10 A.M., for continued hearing

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
 September 12-13, 2022, at 10 A.M., for adjourned hearing

2021-30-BZ

APPLICANT – Sheldon Lobel, P.C., for Mesorah
 Publications, LTD, owner; Brooklyn Rise Charter School,
 lessee.

SUBJECT – Application May 5, 2021 – Variance (§72-21)
 to permit the development of a school (UG 3) (Brooklyn
 Rise Charter School) contrary to ZR §42-10 (use), ZR §43-
 26 (rear yard), ZR §43-43 (street wall height, setback and
 sky exposure plane). M1-2 Zoning District.

PREMISES AFFECTED – 222 44th Street, Block 736,
 Lot(s) 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to August 8-
 9, 2022, at 10 A.M., for adjourned hearing.

2021-41-BZ

APPLICANT – Akerman LLP, for Inwood HT Equities
 LLC, owner.

SUBJECT – Application June 23, 2021 – Variance (§72-21)
 to permit the development of a nine (9) story residential
 building contrary to height (ZR §23-662(a)) and parking
 (ZR §25-23). R7A & R7-2/C2-4

Special Inwood District. PREMISES AFFECTED – 22-38
 Cumming Street, Block 2237, Lot(s) 16 & 18, Borough of
 Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to July 18-
 19, 2022, at 10 A.M., for continued hearing.

PUBLIC HEARINGS MONDAY-TUESDAY, MARCH 28-29, 2022 2:00 P.M.

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

ZONING CALENDAR

2021-29-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for
 Joselito Lopez, owner.

SUBJECT – Application May 3, 2021 – Variance (§72-21)
 to permit the construction of a two-story, two-family
 residential building that does not provide one required front
 yard contrary to ZR §23-45. R4A zoning district.

PREMISES AFFECTED – 3904 Orloff Avenue, Block
 3263, Lot 195, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to May 23-
 24, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 15, 2022

DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

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SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Vacant, *Counsel*

OFFICE - 22 Reade Street, 1st Floor, New York, N.Y. 10007

HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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2022-18-BZ

64 Butler Place, Block 2846, Lot(s) 0174, Borough of **Staten Island, Community Board:1.** Variance (§72-21) to permit the development of a two-story, 2,413.5 square foot, two family dwelling contrary to ZR §23-47. R3A zoning district. R3A district.

2022-19-A

121 Storer Avenue, Block 7311, Lot(s) 0027, Borough of **Staten Island, Community Board: 3.** Proposed development of a two-story warehouse and office building not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special Richmond District. M1-1 district.

2022-20-A

724, 726, 728 Richmond Terrace, Block 00069, Lot(s) 126, 124, 122, Borough of **Staten Island, Community Board: 1.** Proposed development of a one-story warehouse building partially located within the bed of mapped street contrary to General City Law §35. M1-1 zoning district. M1-1 district.

2022-21-A

724, 726, 728 Richmond Terrace, Block 00069, Lot(s) 126, 124, 122, Borough of **Staten Island, Community Board: 1.** Proposed development of a one-story warehouse building partially located within the bed of mapped street contrary to General City Law §35. M1-1 zoning district. M1-1 district.

2022-22-A

724, 726, 728 Richmond Terrace, Block 00069, Lot(s) 126, 124, 122, Borough of **Staten Island, Community Board: 1.** Proposed development of a one-story warehouse building partially located within the bed of mapped street contrary to General City Law §35. M1-1 zoning district. M1-1 district.

2022-23-BZ

1520 East 56th Street, Block 7900, Lot(s) 0053, Borough of **Brooklyn, Community Board: 18.** Variance (§72-21) to permit the construction of a two-story, with cellar, two-family detached residence that does not comply with the zoning requirements for front yards (Z.R. § 2345) and side yards (Z.R. § 23-461). R3-2 zoning district. R3-2 district.

2022-24-A

4074 Victory Boulevard, Block 2629, Lot(s) 1, 20, Borough of **Staten Island, Community Board: 2.** Proposed development of a new 3-story NYC School Construction Authority (SCA) K-5 school building, P.S. 121, located on a site not fronting on a mapped street contrary to General City Law §36. R3A zoning district. R3A district.

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

CALENDAR

TELECONFERENCE PUBLIC HEARINGS MONDAY & TUESDAY, MAY 9-10, 2022 10 A.M. and 2 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, May 9th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday May 10th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe La Sorsa, owner.

SUBJECT – Application October 4, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2022. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415/17 East 92nd Street, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

180-98-BZ

APPLICANT – Law Office of Jay Goldstein, for Swaraj Property, LLC, owner.

SUBJECT – Application September 22, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of (UG 6) retail which expired on December 8, 2018; Amendment to reflect minor changes; Waiver of the Board's Rules of Practice and Procedures. R2 zoning district.

PREMISES AFFECTED – 163-10 Pidgeon Meadow Road aka 163 Place, 47-10 164th Street, Block 5494, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

148-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 11 Avenue A Realty LLC, owner.

SUBJECT – Application November 12, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit multi-family residential use which expired on December 15, 2019; Waiver of the Board's Rules of Practice and Procedures. R8A/C2-5 zoning districts.

PREMISES AFFECTED – 11 Avenue A, Block 429, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEALS CALENDAR

2018-188-A & 2018-189-A

APPLICANT – Sheldon Lobel, P.C., for 3861 Realty LLC, owner.

SUBJECT – Application November 21, 2018 – Proposed construction of a two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district.

PREMISES AFFECTED – 194-28, 194-32 Dunton Avenue, Block 10509, Lot (s)160,61, Borough of Queens.

COMMUNITY BOARD #8Q

ZONING CALENDAR

2020-64-BZ

APPLICANT – Jay Goldstein, Esq., for Congregation Ohr Eliyahu Inc., owner.

SUBJECT – Application August 13, 2020 – 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.

PREMISES AFFECTED – 2020-64-BZ, 85-94 66th Road, Block 3144, Lot 42 Borough of Queens.

COMMUNITY BOARD #6Q

2020-69-BZ

APPLICANT – MBA Architects, for William Moses, owner.

SUBJECT – Application September 9, 2020 – Variance (§72-21) to permit the legalization of dwelling units contrary to ZR 42-10. M1-1 zoning district.

PREMISES AFFECTED – 44 New Lots Avenue, Block 3860, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #16BK

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY, APRIL 11-12, 2022
10:00 A.M.**

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

PROPOSED RULEMARKING

Board of Standards and Appeals
Proposed Rule-Making Under the City Administrative Procedure Act (CAPA) – Draft Rules
Amending 2 RCNY § 1-08.1, § 1-08.2 regarding Environmental Review Requirements under the State Environmental Quality Review Act and City Environmental Quality Review.

ACTION OF THE BOARD – Laid over to April 25, 2022, at 10 A.M., for deferred decision.

SPECIAL ORDER CALENDAR

397-47-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Park Service Station Realty, LLC, owner.

SUBJECT – Application March 31, 2021 – Amendment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). The amendment seeks to permit the installation of a new canopy and the relocation of air and vacuum tower. R3-1 zoning district. PREMISES AFFECTED – 64-01/11 Woodhaven Boulevard, Block 3136, Lot 24, 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 March 8, 2021, acting on DOB Alteration Application No. 440649764, reads in pertinent part, “[p]roposal to erect a new canopy at a UG 16 gasoline service station located in an R3-1 residential district and which previously received a zoning variance under BSA Cal. # 397-47 BZ is contrary to the latest resolution adopted under Cal. # 394-47 BZ and must, therefore, be referred back to the Board of Standards and Appeals for approval.”

This is an application for an amendment, under Z.R. § 11-412, to a previously approved variance to permit the erection of a new canopy and legalize an existing car vacuum and air tower at the Premises.

A public hearing was held on this application on

December 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on March 14, 2022, and then to decision on April 11, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board, 6, Queens, recommends approval of this application.

The Premises are located on the southeast corner of Woodhaven Boulevard and 64th Road, within an R3-1 zoning district, in Queens. With approximately 128 feet of frontage along Woodhaven Boulevard, 114 feet of frontage along 64th Road, and 13,113 square feet of lot area, the Premises are occupied by an existing one-story automotive service station building (1,677 square feet of floor area) with lubratorium and minor auto repairs and accessory sales area (167 square feet of floor area).

The Board has exercised jurisdiction over the Premises since July 22, 1947, when, under the subject calendar number, the Board granted a variance to permit the plot, then-used in part as a legally established gasoline station, to be extended and rearranged substantially as shown on plans filed with the application on condition that all buildings and uses then on the Premises be removed and the lot graded substantially to the grade of surrounding streets; there be erected on the interior lot lines a brick and iron fence not less than six feet in height and the iron fence be erected on a masonry base not less than two feet in height; the Premises be arranged substantially as indicated; complete working drawings be furnished to the Board before same are filed with the borough superintendent for approval by the Board and for the imposing of conditions; such plans be filed within three months and after approval all permits be obtained and all work completed within one year thereafter.

On October 21, 1947, under the subject calendar number, the Board approved plans as in substantial compliance with the resolution.

On May 12, 1991, under the subject calendar number, the Board amended the resolution to permit a change to the design and arrangement of the existing automotive service station; a change the existing “MPD” pumps to self-serve pumps; installation of a fire suppression system, mounted on each light standard; alteration to the existing sales and office area of the accessory building to accommodate an attendant’s booth; legalization of the elimination of a portion of the seeded area and shrubbery for the parking and storage of motor vehicles; and, legalization of a change in the fence on the southerly lot line from an iron rail fence on a low brick wall to a chain link fence, substantially as shown on plans filed with the application, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and, substantial construction be completed within one year, by May 12, 1992, and other than as amended the resolution be complied with in all respects.

On March 30, 1993, under the subject calendar number, the Board further amended the resolution, under Z.R. § 11-412, to permit the installation of a new metal canopy over three new pump islands and a new concrete sidewalk around the northwesterly end of the service station

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building and the relocation of a chain link fence on condition that the entire Premises be paved in accordance with Section 27-479 of the Administrative Code; sidewalks be repaired and adequately maintained; the fences and walls be graffiti free and adequately maintained; the trees be maintained and replaced when necessary; the Premises be in substantial compliance with the proposed 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 30, 1994.

On September 27, 1994, under the subject calendar number, the Board further amended the resolution to permit an extension of time to complete substantial construction for 18 months from March 30, 1994.

The applicant now seeks an amendment, pursuant to Z.R. § 11-412, to permit the erection of a new metal canopy and legalize the presence of a car vacuum and air tower at the Premises. In response to Board questions, the applicant demonstrates that there is no open storage of tires, barrels, or debris at the Premises; site improvements, including the repair and painting of the repair shop door, installation of a low brick wall with wrought iron picket fence, and construction of the trash dumpster enclosure, will be completed within four weeks following the Board's approval. The applicant submits that no changes have occurred or are proposed to the existing one-story building, which remains at 1,677 square feet of floor area, or sales area. The applicant also adds that the adjoining lot, tax lot 22, is not affiliated with the Premises in any way and there is no joint usage of the Premises with adjoining lots. The applicant states that the Premises operates the gasoline service station and accessory convenience store 24 hours per day, 7 days per week, and the accessory auto repair operates Monday through Saturday, 8:00 a.m. to 6:00 p.m., and is closed on Sundays.

The Fire Department states, by letter dated December 21, 2021, that a review of their records indicates that the subject automotive service station is current with Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and 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 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 July 22, 1947, as amended through September 27, 1994, so that as amended this portion of the resolution shall read: "to permit the installation of a new canopy and legalization of a car vacuum and air tower; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Board Approved April 11, 2022"—Eleven (11) sheets; and *on further condition*:

THAT sidewalks shall be repaired and adequately

maintained;

THAT the fences and walls be graffiti free and adequately maintained, as shown on BSA-approved plans;

THAT landscaping shall be maintained and replaced when necessary;

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 a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 397-47-BZ"), shall be obtained within one year, by April 11, 2023;

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

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

THAT the Department of Buildings must 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 11, 2022.

132-58-BZ

APPLICANT – Nasir J. Khanzada, for Maria Barone, owner; Swaranjit Singh, lessee.

SUBJECT – Application July 6, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 20, 2020; Waiver of the Board's Rules of Practice and Procedures. C1-2/R3-2 zoning district. Community Board 7, Queens.

PREMISES AFFECTED – 17-45/17-55 Francis Lewis Boulevard, Block 4747, Lot(s) 31, 41, 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 Scibetta5

Negative:0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated June 11, 2020, acting on DOB Alteration Type 1 Application No. 421757584, reads in pertinent part, "Propose to obtain a new certificate of occupancy for gasoline service station, contrary to the resolutions and plans adopted by the Board of Standards and Appeals under Cal. No. 132-58-BZ and must be referred back to the BSA for approval."

This is an application for an extension of term for a variance previously granted by the Board, pursuant to Z.R. § 11-411, which permitted the operation of a Use Group

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("UG") 16B automotive service station and expired on June 20, 2020 and an amendment to permit the removal of storage sheds, relocation of the emergency electric generation located behind the auto repair shop on lot 41, legalization of a vacuum which was installed along 17th Road, and approval of revised signage.

A public hearing was held on this application on September 13, 2021, after due notice by publication in *The City Record*, with continued hearings on December 13, 2021, February 7, 2022, and March 14, 2022, and then to decision on April 11, 2022. Community Board 7, Queens, recommends approval of this application with the following conditions: installation and operation of an outdoor vehicle lift was rejected; vacuums should have limited hours of operation and hours of vacuum operation should be posted; tire air pumps should be free; damaged asphalt surface on gas station property to be repaired.

The Premises are located on the east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, within a C1-2 (R3-2), in Queens. The site is comprised of two lots with frontage on Francis Lewis Boulevard to the west, 17th Road to the north, 160th Road to the east, and 18th Avenue to the south. With approximately 242 feet of frontage along Francis Lewis Boulevard, 102 feet of frontage on 18th Avenue, 141 feet of frontage on 17th Road, 120 feet of frontage along 160th Street, and 28,393 square feet of lot area, the Premises are occupied by two, one-story automotive service buildings.

The Board has exercised jurisdiction over the Premises since March 3, 1954, when, under the subject calendar number, the Board granted a variance for a term of 15 years to permit the Premises to be occupied as a gasoline service station and uses lawfully accessory thereto substantially as indicated on plans filed with the application, on condition that all buildings and uses now on the Premises be removed and the Premises be constructed and arranged substantially as indicated on the approved plans; the accessory building be in the location and of the design and arrangement as shown, without cellar and faced on all sides with face brick and roofed with asphalt shingles; in all other respects the accessory building comply with the requirements of the Building Code; pumps be of low approved type erected where shown, fifteen feet from the street building line of Francis Lewis Boulevard; gasoline storage tanks not exceed 12 550-gallon approved tanks; the sidewalks and curbing on the streets abutting the Premises be reconstructed or repaired, and installed where missing to the satisfaction of the Borough President; curb cuts be restricted to four curb cuts, each 30 feet in width to Francis Lewis Boulevard, as shown; where shown, new trees be planted and maintained on 17th Road, 18th Avenue and 160th Street; a wall, as shown, be constructed on the building line consisting of a masonry portion 2'-6" in height and steel pickets above to a total height of 5'-6"; signs be restricted to permanent signs attached to the façade of the accessory building and to the illuminated globes of the pumps excluding all roof signs and temporary signs and advertising devices but permitting within the building line, both to the north and to the south,

post standards each 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 balance of the Premises be paved with concrete or asphaltic pavement; suitable curbing be maintained for protection to the planting areas which be not less than eight inches above grade and six inches in width; the planting be maintained with suitable planting materials; under Section 7e, there may be minor repairs with hand tools only for adjustments maintained solely within the accessory building for a similar term; under Section 7h, for a similar term, there may be parking and storage of motor vehicles maintained where such parking and storage will not interfere with the servicing of the station; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; all permits be obtained and all work completed with the requirements of Section 22A of the Zoning Resolution.

On June 18, 1974, under the subject calendar number, the Board amended the resolution to extend the term for ten years, to expire on June 18, 1984, on condition that a curb be installed along the sidewalk on 17th Road in front of the Premises; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On July 30, 1985, under the subject calendar number, the Board further amended the resolution to extend the term for ten years after the expiration of the prior grant, to June 18, 1994, and to eliminate one gasoline pump island on condition that all work substantially conform to the plans as filed with the application; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by July 30, 1986.

On June 12, 2001, under the subject calendar number, the Board further amended the resolution to permit a reduction in the number of pump islands from six to five and the redesigning of overhead canopy and to extend the term of the variance, on condition that term be limited to ten years, to expire on June 18, 2010; the hours of operation for the repair service be Monday through Saturday 7:00 a.m. through 7:00 p.m., closed all day on Sundays; the portion of the site next to the repair building be secured after 7:00 p.m. and all day on Sunday; no towing to this site be conducted between 10:00 p.m. and 7:00 a.m. from Monday to Saturday; there be no towing to this site on Sundays; no trucks be stored at this site; the street trees, landscaping and signs be maintained in accordance with the BSA-approved plans; the above conditions appear on the certificate of occupancy; the Premises be maintained free of graffiti and debris in substantial compliance with the existing and proposed conditions plans submitted with the application; and other than as amended, the above cited resolution be complied with in all respect and that a certificate of occupancy be obtained within 18 months of the date of the resolution, by December 12, 2002.

On March 8, 2011, under the subject calendar number,

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the Board further amended the resolution to extend the terms for ten years from the expiration of the prior grant, to expire on June 18, 2020, and to permit the noted amendment to the hours of operation on the site, on condition that all use and operations substantially conform to plans filed with this application; the terms of the grant expire on June 18, 2020; the hours of operation for the automotive repair service be limited to: Monday through Saturday, from 7:00 a.m. to 7:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; the Sunday operation of the automotive repair service be limited to oil changes, tire repairs and rotations/changes, and New York State inspections; all signage comply with C1 district regulations; landscaping be provided and maintained on the site in accordance with the BSA-approved plans; the site be maintained free of debris and graffiti; the above conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained by March 8, 2012; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings must ensure compliance 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. Originally, the applicant proposed to enlarge the accessory convenience store addition to the pre 1961 service building. The applicant represented that the addition was approved in 1996 by DOB. At the request of the Board, the applicant provided the DOB-approved drawings which demonstrated that the building had already been enlarged to the limits allowed under Z.R. § 11-412. The applicant now seeks to permit revision to the signage plans, legalization of an emergency electric generator to be relocated to the right side of auto repair shop, and legalization of a vacuum located along 17th Road. Specifically, the applicant proposes to legalize the addition of two new signs, a Nor-Cross Service Station sign mounted on the auto repair shop and a "Diesel Sold Here" sign located at the corner of Francis Lewis Boulevard and 17th Road. The applicant proposes to maintain the existing 48 square feet of illuminated signage fronting along 18th Avenue and 48 square feet of illuminated signage fronting along 17th Road and states that all proposed changes to the signage would comply with underlying C1-2 zoning district regulations. The applicant represents that it would maintain the existing 15 parking spaces at the subject Premises. The applicant declares that the hours of operation for the automotive repair shop are Monday through Saturday, 7:00 a.m. to 7:00 p.m., and 8:00 a.m. to 6:00 p.m. on Sundays, and the automotive repair business operates from Monday through Saturday, 7:00 a.m. to 6:00, and Sundays, 8:00 a.m. to 5:00 p.m.

Over the course of hearings, the Board expressed

concerns about the subject site's compliance with the conditions of the prior grant, specifically the landscaping as required by the previously approved plans. The Board noted that landscaping behind the subject building and on Lot 41 is required to prevent it from being used as storage and, to that end, directed the applicant to plant arborvitae, such as bushes and trees, instead of just grass as well as to install a fence the length of the property line. The Board further noted that the submitted plans should include the required landscaping as well as notes stating that the landscaped area is not for commercial use. Additionally, the Board stated that the applicant must remove the storage containers from the site; repaint and repair the stone masonry wall for the convenience store; and replace the damaged doors on the trash enclosure and keep the dumpster inside of the enclosure. In response, the applicant submitted revised plans demonstrating the additional landscaping, including the proposed arborvitae; clarifying all the existing and proposed fencing and curbs at the Premises; and notes indicating that the trash enclosure masonry wall would be repaired and repainted, the steel enclosure doors would be replaced, and that the operation at the site is not used in connection with lot 39. Additionally, the applicant submitted photographs of the site showing removed sheds from the rear of the repair shop.

By correspondence dated September 13, 2021, the Fire Department states that it has inspected the subject Premises and has no objection to the application. All permits for these Premises are current.

Based upon its review of the record, the Board has determined that the extension of term of the variance 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 3, 1954 as amended through March 8, 2011, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on June 18, 2030, and to permit the noted modifications, *on condition* that all work and site conditions shall conform to drawings filed with this application and marked 'Received March 10, 2022' - Seven (7) sheets; and *on further condition*;

THAT the hours of operation for the automotive repair shop shall be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m., and 8:00 a.m. to 6:00 p.m. on Sundays and the hours of operation for the automotive repair business shall be limited to Monday through Saturday, 7:00 a.m. to 6:00, and Sundays, 8:00 a.m. to 5:00 p.m.;

THAT the Sunday operation of the automotive repair service shall be limited to oil changes, tire repairs and rotations/changes, and New York State inspections;

THAT all signage shall comply with C1 district regulations;

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

THAT lot 41 shall not be used for accessory storage;

THAT there shall be no use of outdoor storage sheds or trailers;

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THAT landscaping, asphalt, and fencing shall be provided and maintained on the site in accordance with BSA-approved plans;

THAT the asphalt and fencing shall be replaced and repaired as needed;

THAT the dumpster shall be stored inside of the trash enclosure at all times except when emptying;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 132-58-BZ'), shall be obtained within two years, by April 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;

THAT the Department of Buildings must 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 11, 2022.

160-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for HJC Holding Corp., owner.

SUBJECT – Application February 5, 2021 – Extension of Term of a previously approved Variance (§72-21) permitting commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B) which expired on July 13, 2013; Amendment to eliminate the accessory fuel storage and motor vehicles sales and repair use; Extension of Time to obtain a Certificate of Occupancy which expired on January 13, 2012; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Block 4527, Lot 0000, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application dismissed.

THE VOTE –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, and Commissioner Sheta.....3

Negative: Vice-Chair Chanda and Commissioner Scibetta..2

THE RESOLUTION –

The applicant represents that this is an application for a waiver of the Board's Rules of Practice and Procedures, an extension of term of a variance, granted under Z.R. § 72-21, that legalized the use of the Premises for commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16), and expired on July 13, 2013, an extension of time to obtain a certificate of occupancy, which expired on January 13, 2012, and a change of use to eliminate accessory fuel storage and motor

vehicle sales and repair to permit only commercial storage of motor vehicles. However, as herein described, the Board disagrees with the applicant's representation of this application.

A public hearing was held on this application on October 4, 2021, after due notice by publication in *The City Record*, with continued hearings on January 24, 2022, and then to decision on April 11, 2022. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 5, Brooklyn, recommends approval of this application on condition that the Board request immediate response to identification of the tenant/lessee and the connected distribution hub which will feed the "last mile;" Community Board 5, Brooklyn, receive notification upon any change in tenancy and mode of operations; the incoming tenant adheres to the Board's request to refrain from conducting any overnight operations to lessen negative impact on infrastructure and quality of life for surrounding residents; there be implementation of 24-hour security to ensure site safety; lighting be installed on the exterior walls of the site to address any potential public safety concerns; and, the incoming lessee be connected to Community Board 5, Brooklyn, to immediately collaborate on local sub-contracting opportunities and plans for local hiring and driving opportunities.

I.

The Premises consist of several tax lots comprising an entire block bounded by Fountain Avenue to the west, Wortman Avenue to the south, Euclid Avenue to the east, and Stanley Avenue to the north, within an R4 zoning district, in Brooklyn. With approximately 503 feet of frontage along Fountain Avenue, 70 feet of frontage along Wortman Avenue, 500 feet of frontage along Euclid Avenue, 208 feet of frontage along Stanley Avenue, and 19,000 square feet of lot area, the Premises are occupied as a bus parking area with accessory buildings used for a auto repair shop, offices, and restrooms.

II.

The Board exercised jurisdiction over the Premises since June 7, 1977, when, under BSA Cal. No. 841-76-BZ, the Board granted a variance over a portion of the Premises consisting of tax lots 61, 64, 77, 78, 80, 113, and 120, to permit the enlargement in area of an existing automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, for a term of ten years.

On October 30, 1979, under BSA Cal. No. 78-79-BZ, the Board granted a variance to permit the enlargement in area of the existing automobile wrecking and dismantling establishment approved pursuant to BSA Cal. No. 841-76-BZ onto tax lots 94 and 110 (then-current tax lot 94).

Subsequently, the grants were amended and the terms extended until their expiration on June 7, 2007.

On December 5, 2006, two applications to extend the term of the variance as to tax lots 61, 64, 77, 78, 80, 85, 11, 94, and 110, under BSA Cal. No. 78-79-BZ and 841-76-BZ, were filed but, on July 15, 2008, were withdrawn.

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The prior variances expired and, since no legal pre-1961 commercial/manufacturing use had been established at the Premises to allow the non-conforming use to continue absent a variance, an application for a new variance, pursuant to Z.R. § 72-21, under the subject calendar number was filed on June 11, 2008, to permit the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16). Public hearings were held on January 12, 2010, March 2, 2010, April 13, 2010, May 25, 2010, and June 15, 2010, with decision on July 13, 2010. In considering the variance application, the Board “[. . .] raised concerns with the existing use and operation of the site and its impact on nearby residential uses, noting that the existing site conditions did not satisfy the finding required to be made under ZR § 72-21(c)” and “[. . .] directed the applicant to provide an operational plan and site improvements” plan. In response to the Board’s direction, “[. . .] the applicant submitted a beatification plan, which includes: (1) removal of the second story of the two-story storage shed located along Euclid Avenue; (2) painting the metal repair structures on the site; (3) the installation of a new chain link fence with a height of eight feet around the perimeter of the site, with privacy slats installed throughout the fencing; (4) the planting of 44 new street trees and 172 new evergreen trees around the perimeter of the site; and (5) the installation of new sidewalks and tree pits, each with a width of four feet, on Stanley Avenue, Euclid Avenue and Wortman Avenue”.

The Board went on to state that “[. . .] the implementation of the aforementioned improvements to the operational plan and site conditions is necessary in order for the applicant to satisfy ZR § 72-21(c); and [. . .] as noted above, the current site conditions do not satisfy ZR § 72-21(c); thus, the Board finds it appropriate to condition the resolution on the implementation of the noted improvements to the operational plan and the site conditions and to set a timetable for the implementation of such improvements [. . .] the Board requires the following schedule for the implementation of the noted site improvements: (1) the revised hours of operation, parking layout and internal circulation at the site will be implemented immediately upon the Board’s approval of the subject variance application; (2) the removal of the second story of the storage shed and the painting of the metal repair structures will be completed by September 15, 2010; (3) the new sidewalks, tree pits, and planting strips will be installed by April 15, 2011; (4) the new fencing and slats will be installed by May 15, 2011; and (5) the proposed landscaping and the planting of street trees will be completed by July 15, 2011 [(the “Implementation Schedule”)]; and [. . .] the Board notes that pursuant to ZR § 72-22, it has the authority to prescribe conditions and safeguards to the grant of a variance, and the applicant’s failure to comply with such conditions constitute the basis for revocation of the grant or the denial of a future application for renewal of the grant[.]”

Pursuant to and in consideration of the aforementioned Implementation Schedule of noted site improvements, and

contingent upon compliance therewith, the Board stated that it would permit the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16), on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the grant expire on July 13, 2013; the total number of buses on the Premises be limited to 125; the activities on the Premises be limited to the storage and dispatching of 125 buses and minor repairs; 20 parking spaces be provided on the Premises for employee parking; the existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue be eliminated in accordance with the BSA-approved plans; the hours of operation for bus storage and parking be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; and the hours of operation for the repair shop be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.; the second story of the two-story accessory storage shed along Euclid Avenue be removed and the metal repair structures on the Premises be painted by September 15, 2010; sidewalks, tree pits, and planting strips be installed and maintained in accordance with the BSA-approved plans by April 15, 2011; fencing be installed and maintained in accordance with the BSA-approved plans, by May 15, 2013; landscaping and street trees be provided and maintained in accordance with the BSA-approved plans by July 15, 2011; the conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained by January 13, 2012; construction proceed 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 objections 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.

III.

The applicant now seeks to extend the term of the grant, arguing that it expired July 13, 2013, and the time to obtain a certificate of occupancy, expired January 13, 2012. Because this application was filed less than ten years since the expiration of the term, and more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant also 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)(ii) and 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application. Additionally, the applicant seeks an amendment to eliminate the accessory fuel storage and motor vehicles sales and repair use, permitting only commercial storage of motor vehicles and buses (Use Group 16C).

The applicant seeks to reconfigure and repave the Premises as a “last mile” delivery vehicle station with 107 parking spaces to be used for commercial delivery vehicles. The applicant proposes to demolish the existing structures

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and construct three new accessory structures: a security booth, utility room, and restroom. The applicant also proposes to install anti-graffiti exterior fencing to screen the use from adjacent lots. The applicant states that the “last mile” distribution facility will operate with peak hours between 6:30 a.m. to 8:00 a.m. and 4:00 p.m. to 7:00 p.m. with approximately 15-18 vehicles departing in unspecified intervals.

The applicant concedes that the improvements to the Premises required under the Board’s July 13, 2010, resolution were not completed in accordance with the Implementation Schedule but claims that they were achieved by the time of filing the instant application, on February 5, 2021. Instead, the applicant argues that the improvement requirements of the Implementation Schedule constitute conditions of the Board’s grant, pursuant to Z.R. § 72-22, and applicants may request the fulfillment of such Board conditions to be amended, waived, or simply unmet. Further, the applicant contends that many of the improvements required under the Implementation Schedule and the July 13, 2010, resolution would be rendered moot by the proposed changes to the Premises. As to compliance with the resolution, the applicant argues that many of the Board’s conditions relating to operation of the Premises now comply, as the Premises are vacant and structures that were to be maintained will be demolished instead; only partial fencing is installed in accordance with the Board’s approval and not currently maintained, but is proposed to be fully replaced; 33 street trees were planted by the time of filing of the instant application and the applicant submits that obtaining final approval of the street tree planting plan took an extended period of time.

The applicant argues that despite the requirement to accomplish all of the site improvements according to the timeline set forth in the Implementation Schedule, the Board’s July 13, 2010, resolution demonstrates that all of the required findings under Z.R. § 72-21 had been satisfied and, as such, establishes that the variance had been granted in 2010, hence entitles the applicant to request a waiver of the Board’s Rules to permit the late filing of the requests for an extension of term and time to obtain a certificate of occupancy, and an amendment to permit the noted modifications to the Premises.

IV.

The Board also reviewed publicly available street and satellite imagery dated on or about the time that the implementation of the site improvements pursuant to the Implementation Schedule should have been completed and observed that, by 2014, none of these improvements had been completed. It is also noted that the Premises are, at present, in a state of vacant neglect.

In considering the applicant’s request, the Board noted that one of the Board’s commissioners was also a commissioner during the Board’s consideration of the application in 2010, hence has special insight into the rationale behind the Board’s 2010 decision.

The Board also noted the extremely unusual nature of the July 13, 2010, resolution that reserved establishment of

the required Z.R. § 72-21(c) finding for a later date, dependent on the satisfaction of the Implementation Schedule and the applicant’s directed return upon the contingent approval’s expiration only three years later, which would amount to a determination by the Board that the Implementation Schedule, hence the prospective Z.R. § 72-21(c) finding had, as of July 13, been satisfied.

The Board’s majority finds that the applicant fails to establish the required Z.R. § 72-21(c) finding pursuant to the Board’s July 13, 2010, resolution, which required a specific Implementation Schedule of noted improvements to the Premises, and determines that the applicant therefore fails to establish a variance grant pursuant to the Board’s July 13, 2010, resolution and, ultimately, dismisses the application for lack of jurisdiction; a waiver of the Board’s Rules is, therefore, not available.

A.

The Zoning Resolution, under Z.R. § 72-21, requires the Board to “make each and every one of the following findings,” and further requires that “[. . .] the decision or determination of the Board shall set forth each required finding in each specific grant of a variance, and in each denial thereof which of the required findings have not been satisfied.” The Board’s July 13, 2010, resolution, *supra*, was specific as to its determination that the required finding under Z.R. § 72-21(c) had not been met. Board staff site visits and Board inspection of materials demonstrate the absence of required sidewalks and fencing in 2010, 2012, and 2013; only in 2016 does the Board observe evidence of the first sidewalks installed about the Premises. The Board’s record is absent any proof of efforts to fulfill the improvements in timely compliance with the Implementation Schedule.

The majority finds the Implementation Schedule a condition precedent to the establishment of a variance under the July 13, 2010, resolution and disagrees with the applicant’s argument that the Implementation Schedule instead constitutes only conditions to the Board’s variance grant. To the contrary, the Implementation Schedule constitutes the Board’s findings under Z.R. § 72-21(c), and not solely conditions pursuant to Z.R. § 72-22, in spite of the fact that the terms of the Implementation Schedule are also listed as conditions in the resolution with reference to the Board’s authority under Z.R. § 72-22 to impose them. Pursuant to the July 13, 2010, resolution, the Z.R. § 72-21(c) finding could only be established pursuant to timely compliance with the Implementation Schedule, and the applicant fails to demonstrate in this record that such has occurred. The required findings underlying the July 13, 2010, variance have not been established and, therefore, the Board cannot consider the requested relief.

The Board directs that the applicant’s proposal must be filed as a new variance as the Board lacks the jurisdiction to consider the waiver of the Board’s Rules, extensions, or amendment.

B.

A minority of the Board finds jurisdiction to consider the proposal. The position of a minority of the Board finds

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that the July 13, 2010, resolution did in fact grant a variance, despite the applicant's unclean hands and subsequent compliance failures. As such, a minority of the Board finds that the Board has the jurisdiction to continue to consider the requested waiver of the Board's Rules, extensions, or amendment.

V.

Based on the foregoing, a majority of the Board finds that the applicant fails to establish the grant of a variance under the July 13, 2010, resolution and, as such, the Board lacks the jurisdiction to consider the requested waiver of the Board's Rules, extension of term, extension of time to obtain a certificate of occupancy, and amendment.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *dismiss* this application for lack of jurisdiction.

Adopted by the Board of Standards and Appeals, April 11, 2022.

2016-1219-BZII

APPLICANT – Sheldon Lobel, P.C., for 74th and Myrtle LLC, owner.

SUBJECT – Application November 15, 2021– Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a two-story mixed-use commercial and residential building which expired on November 17, 2021. R4-1 zoning districts. PREMISES AFFECTED – 73-45 Myrtle Avenue, Block 3823, Lot 88, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously approved variance, under Z.R. § 72-21, that permitted the construction of a two-story plus cellar mixed-use commercial and residential building and expired on November 17, 2021.

A public hearing was held on this application on March 14, 2022, after due notice by publication in *The City Record*, and then to decision on April 11, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding neighborhood.

The Premises are located northwest corner of Myrtle Avenue and 74th Street, within an R4-1 zoning district, in Queens. With approximately 102 feet of frontage along Myrtle Avenue, 35 feet of frontage along 74th Street, and 2,620 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since November 21, 2017, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21,

to permit the construction of a two-story plus cellar mixed-use commercial and residential building contrary to the use, front yard, side yards, floor area and floor area ratio regulations set forth in Z.R. §§ 22-10, 23-45, 23-462, and 23-142, on condition that all work substantially conform to plans filed with the application; the maximum envelope of the building be as follows: a maximum of 4,705 square feet of floor area (a maximum of 1,997 square feet of commercial floor area (0.76 FAR) and a maximum of 2,708 square feet of residential floor area (1.03 FAR)), a total maximum FAR of 1.80, no side yards, no front yard along the 74th Street frontage, and a front yard along the Myrtle Avenue frontage with a depth of at least 2'-9" at the western end of the site so that the building aligns with the existing two-story building located immediately adjacent to the site to the west, as illustrated on the Board-approved plans; substantial construction be completed pursuant to Z.R. § 72-23; a certificate of occupancy be obtained within four years; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all 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 substantially constructed and obtain a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant states that delays in construction have occurred due to economic impacts of the COVID-19 pandemic that have cause difficulty on the owner to obtain financing. The applicant anticipates completing construction of the building and obtaining a certificate of occupancy within four years.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and 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, dated November 21, 2017, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, by April 11, 2026; *on condition*:

THAT the maximum envelope of the building shall be as follows: a maximum of 4,705 square feet of floor area (a maximum of 1,997 square feet of commercial floor area (0.76 FAR) and a maximum of 2,708 square feet of residential floor area (1.03 FAR)), a total maximum FAR of 1.80, no side yards, no front yard along the 74th Street frontage, and a front yard along the Myrtle Avenue frontage with a depth of at least 2'-9" at the western end of the site so that the building aligns with the existing two-story building located immediately adjacent to the site to the west, as illustrated on the Board-approved plans;

THAT all conditions from prior resolutions not

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specifically waived by the Board remain in effect;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2016-1219-BZ”), shall be obtained within four years, by April 11, 2026;

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 11, 2022.

2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved General City Law § 35 waiver to construct a two-story mixed-use commercial and residential building within the bed of a mapped street which expires on July 25, 2021. C1-3/R4 Special Hillside Preservation District.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy for a previously approved General City Law (“GCL”) § 35 waiver, which permitted the construction of a two story, mixed-use commercial and residential building within the bed of a mapped street and expired on July 25, 2021.

A public hearing was held on this application on November 15, 2021, after due notice by publication in *The City Record*, with continued hearings on January 25, 2022 and February 28, 2022, and then to decision on April 11, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the southwest corner of Victory Boulevard and Cebra Avenue, within a C1-3 (R4) zoning district, in the Special Hillside Preservation District, in Staten Island. With approximately 50 feet of frontage along Victory Boulevard, 108 feet of frontage along Cebra Avenue, and 6,2178 square feet of lot area, the Premises are occupied by a one-story, manufacturing building.

The Board has exercised jurisdiction over the Premises since July 25, 2017, when, under the subject calendar number, the Board granted an appeal, pursuant to GCL § 35, on condition that construction will substantially conform to the drawings filed with the application; the site comply with all applicable conditions required by the Negative Declaration, dated September 13, 2010, associated with its E designations for hazardous materials, air quality, and noise (E-262); all DOB and related agency application(s) filed in connection with authorized use and/or bulk be signed off by DOB and all other relevant agencies by July 25, 2021; DOB review the plans associated with the Board’s approval for compliance with all relevant provisions of the Zoning Resolution; to the extent required by DOB and/or DOT, a Builder’s Pavement Plan be filed and approved prior to the issuance of the certificate of occupancy; a certificate of occupancy be obtained within 4 years, by July 25, 2021; 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 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 obtain a certificate of occupancy having expired, the applicant now seeks an extension of time. The applicant represents that no construction of the proposed project has begun, as it has experienced delays related to conditions surrounding the COVID-19 pandemic. Furthermore, the applicant is requesting a four-year extension to obtain the certificate of occupancy.

Over the course of hearings, the Board raised concerns regarding the current conditions at the site, including outstanding DOB violations, and the time to complete construction of the project. In response, the applicant submitted an invoice from the site’s demolition contractor explaining the remaining steps to complete the demolition process of the existing building; a letter from the architect clarifying filing and construction status; proof of payment and resolution to the outstanding violations; and photographs of the site depicting improved fencing, removed razor wire, and painted over graffiti on the building doors painted.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 25, 2017, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for four years; *on condition* that the use and operation of the site shall substantially conform to the BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the site shall be maintained;

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THAT the site shall comply with all applicable conditions required by the Negative Declaration, dated September 13, 2010, associated with its E designations for hazardous materials, air quality and noise (E-262);

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 April 11, 2026;

THAT DOB shall review the plans associated with the Board's approval for compliance with all relevant provisions of the Zoning Resolution;

THAT to the extent required by DOB and/or DOT, a Builder's Pavement Plan shall be filed and approved prior to the issuance of the Certificate of Occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 2017-4-A'), shall be obtained within four years, by April 11, 2026;

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 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 11, 2022.

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 September 12-13, 2022, at 10 A.M., for continued hearing.

914-86-BZII

APPLICANT – Klein Slowik, PLLC, for Union Temple of Brooklyn, owner; Eastern Atlantic Inc., lessee.

SUBJECT – Application September 30, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 19, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on December 14, 2011; Amendments to the

Board's conditions on term, Amendment to enlarge the mezzanine; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for adjourned hearing.

182-85-BZ

APPLICANT – Eric Palatnik, P.C., for 209-11 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the enlargement of a contractor's establishment (UG 16) which expired on August 22, 2021. R6B zoning district.

PREMISES AFFECTED – 209-11 20th Street, Block 637, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

183-85-BZ

APPLICANT – Eric Palatnik, P.C., for 206 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom which expired on September 19, 2021. R6B zoning district.

PREMISES AFFECTED – 206/8 20th Street, Block 640, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

268-03-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Park Circle Realty Associates, owner.

SUBJECT – Application October 13, 2021 – Extension of Term (§11-411) for the continued operation of an automotive service station which will expire on January 27, 2024; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 145-55 Guy Brewer Boulevard, Block 13313, Lot 40, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for postponed hearing.

MINUTES

2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner

SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow the development of a commercial building which expired on June 20, 2021, Waiver of the Board’s Rules of Practice and Procedures. C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to April 11-12, 2022, at 10:00 A.M. for postponed hearing.

174-07-BZ

APPLICANT – Eric Palatnik, P.C., for REMICA Property Group Corp., owner; BOLLA EM Realty, LLC, lessee.

SUBJECT – Application April 22, 2020 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an automotive service station (UG 16B), which expired on June 17, 2018; Extension of Time to Obtain a CO which expired on June 17, 2016; Waiver of the Board’s Rules of Practice and Procedure. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, Block 6758, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

6-14-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application March 10, 2021 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on February 28, 2021. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, Block 1521, 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for decision, hearing closed.

128-15-BZII thru 130-15-BZII

APPLICANT – Terminus Group, LLC, for John Massamillo, owner

SUBJECT – Application January 24, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a three-family attached residential building which expires on April 10, 2022. R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682, 684 Van Duzer Street, Block 615, Lot(s) 95, 96, 97, 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 9-10, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR**2022-6-BZY**

APPLICANT – Herrick, Feinstein LLPC, for Griffon Gansevoort Holdings LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning.

PREMISES AFFECTED – 55 Gransevoort Street, Block 644, Lot 60, 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 Scibetta5
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 (“DOB”), acting on Alteration Type 1 Application No. 122816863-01-AL, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on March 29, 2022, after due notice by publication in *The City Record*, and then to decision on April 11, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 2, Manhattan, waived its recommendation of this application.

The Premises are located on the north side of Gansevoort Street, between Washington Street and 9th Avenue, within an M1-6 zoning district, in Manhattan. With approximately 115 feet of frontage along Gansevoort Street, 65 feet of depth, and 3,740 square feet of lot area, the

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Premises are occupied by a five-story transient hotel building.

I.

On September 27, 2017, DOB issued Permit No. 122816863-01-AL permitting the renovation and enlargement of the second through fifth floors and conversion of the same to hotel use; on September 18, 2018, DOB issued Permit No. 122816863-02-PL permitting mechanical and plumbing work at the subject site and determined that the building would comply with all applicable zoning regulations.

The amendment to the text of Z.R. § 42-11 (i) to eliminated Use Group (“UG”) 5 transient hotels as as-of-right uses in M1 zoning districts, including at the Premises, (ii) established new Z. R. §§ 42-111 and 74-803, which require the City Planning Commission (“CPC”) to issue a special permit to allow for most UG 5 Transient Hotels within M1 zoning districts as of April 23, 2018 (“Effective Date”), and (iii) applied the provisions of Z.R. § 11-30 concerning the right to continue construction.

II.

Pursuant to Z.R. § 42-111(e), if a building permit for a development, enlargement or conversion to a transient hotel was issued on or before April 23, 2018, such construction may be started or continued regardless of the CPC special permit requirement in the Text Amendment.

Pursuant to Z.R. §§ 11-332(a) and 42-111(e), because construction was not completed and a temporary certificate of occupancy (“TCO”) was not issued for the site by December 20, 2021, the building permits automatically lapsed. However, these sections also provide that where an application is made within 30 days of such lapse, the Board of Standards and Appeals may renew the building permits for up to one term of not more than three months, for work defined as “other construction” pursuant to Z.R. § 11-31(c)(3). “Other Construction” includes enlargement and conversion work.

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 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 enlarge and convert the building in accordance with the New Building Application before the Effective Date. Pursuant to Z.R. § 11-332 (a), substantial construction can be established where significant progress on a building was completed prior to the applicable amendment. The applicant submitted a Construction Certification, certifying that the hotel construction was substantially completed as of December 7, 2021 (approximately 92% of construction completed). In addition, the applicant presented an Alt-1 Timeline, which demonstrated the hotel passed its TCO inspection on December 10, 2021.

The applicant submitted supporting materials demonstrating that the total construction budget for the hotel is approximately \$62,898,001.34, and that as of November 30, 2021, the total amount of expenditures incurred in connection with construction of the hotel exceeded approximately \$58,315,274.04 and was at approximately 92% of the total budget expended toward its completion.

The Board recognizes that if the right to complete construction of the hotel were denied, the owner would suffer serious loss—that is, substantial economic harm, as construction has progressed and substantial expenditures have been made. 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.

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 Alteration Type 1 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 Alteration Type 1 No. 122816863, as well as all related permits for various work types, either already issued or necessary to complete construction, for three months, expiring July 11, 2022.

Adopted by the Board of Standards and Appeals, April 11, 2022.

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2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th 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 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for deferred hearing

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.

SUBJECT – Application September 4, 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). R3X Special Richmond District.

PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for adjourned hearing.

2021-68-A

APPLICANT – Bernard Kho, R.A., for Dean Johanson, owner.

SUBJECT – Application October 22, 2021 – Proposed development of a NYC School Construction Authority (SCA) school building located on a site not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district. Special South Richmond Development District.

PREMISES AFFECTED – 348A Deisius Street, Block 6566, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

2021-86-BZY

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 218 Holding Inc., owner.

SUBJECT – Application November 20, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district.

PREMISES AFFECTED – 88 Walker Street, Block 196, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2021-19-BZ

APPLICANT – Sheldon Lobel, P.C., for ABIC International Corp., owner.

SUBJECT – Application March 16, 2021 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports contrary to ZR 61-21. C4-2 & C4-3 zoning districts.

PREMISES AFFECTED – 36-21 Prince Street, Block 4971, Lot 10, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated February 11, 2021, acting on Alteration Type 1 Application No. 440636402, reads in pertinent part:

Objection #12: Approval from BSA is required as the height of the building is more than the permitted height per ZR 61-20. The proposed height exceeds the permitted height per ZR 61-20 and is required to obtain BSA special permit per ZR 73-66.

This is an application for a special permit under Z.R. §§ 73-66 and 73-03 to permit—partially within a C4-2 zoning district and partially within a C4-3 and zoning district—the development of an 11-story mixed-use, commercial, community facility, and residential 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 December 14, 2021, after due notice by publication in *The City Record*, with a continued hearing on March 15, 2022,

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and then to decision on April 11, 2022. Vice-Chair Chanda performed an inspection of the Premises and the surrounding neighborhood. Community Board 7, Queens, recommends approval of the application on condition of a letter of No Objection from the Port Authority. The Board also received one form letter of support and two form letters of objection, citing concerns that the new building would block views of the surrounding area.

I.

The Premises are located at the east side of Prince Street, partially within a C4-2 zoning district and partially within a C4-3 and zoning district, in Queens. With approximately 50 feet of frontage along Prince Street, 148 feet of depth, and 7,131 square feet of lot area, the Premises are currently occupied by a two-story, plus cellar, commercial building.

The applicant proposes to enlarge the existing building to an 11-story, mixed-use, commercial, community facility and residential building with 29,719 square feet of total floor area (4.17 FAR). The applicant represents that the proposed development would comply with all applicable bulk regulations of the underlying zoning districts. The approach surface of LaGuardia Airport is the most restrictive in relation to the location of the proposed development and is, therefore, the surface which the proposed development must not penetrate. Z.R. § 61-21. The applicant represents that the approach surface where the proposed development is located is at an inclined plane of 164.83' above mean sea level ("ASML") – 167.58' ASML, which is the maximum permitted elevation of the proposed development. The applicant further represents that to the top of the Federal Aviation Administration ("FAA") obstruction light, the proposed development has a maximum elevation of 185.00' ASML, and, therefore, the applicant seeks a waiver of Z.R. § 61-20 to permit a maximum obstruction elevation of 185.00' ASML.

II.

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 "FAA" issued

four Determinations of No Hazard to Air Navigation on February 3, 2021, under Aeronautical Study No. 2020-AEA-13134-OE at latitude 40-45-42.44N, longitude 73-49-56.64W, 148 feet above ground level, and 185 feet above mean sea level ("Building Point 1"), under Aeronautical Study No. 2020-AEA-13135-OE at latitude 40-45-42.08N, longitude 73-49-56.60W, 147 feet above ground level, and 185 feet above mean sea level ("Building Point 2"), under Aeronautical Study No. 2020-AEA-13136-OE at latitude 40-45-42.26N, longitude 73-49-58.44W, 146 feet above ground level, and 186 feet above mean sea level ("Building Point 3"), and under Aeronautical Study No. 2020-AEA-13137-OE at latitude 40-45-41.90N, longitude 73-49-58.33W, 144 feet above ground level, and 186 feet above mean sea level ("Building Point 4"), (collectively, the "FAA No Hazard Determinations"). The reviewed materials include a survey and four study points at the corners of the zoning lot keyed to maximum heights in AGL and AMSL, 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 existing or proposed arrival, departure, or en route instrument flight rule ("IFR") operations, minimum flight altitudes, minimum vectoring altitudes ("MVA"), aeronautical procedures, aeronautical facilities or at any other public use or military airport. Information on the proposal shall be forwarded to the appropriate aeronautical charting office for consideration.

The FAA Hazard determinations also find that the proposal was shown to exceed 77.19 (a), however, the proposal would not conflict with airspace required to conduct normal visual flight rule ("VFR") traffic pattern and/or visual approach operation at LGA or at any other known public use or military airport. The proposal would not require a VFR aircraft to change its regular flight course or altitude, restrict VFR operations in any way, or create a dangerous situation during a critical phase of flight while operating under VFR conditions. Therefore, at heights between 144 feet AGL and 148 feet AGL, and as noted in each separate FAA Determination of No Hazard ("DNH") letter, the proposal would have no substantial adverse effects on any existing or proposed VFR arrival, VFR departure, charted visual procedure, en route, minimum flight altitudes, or VFR helicopter routes in the vicinity of this location.

Moreover, the FAA states that once the structure has reached the greatest height, it is required that FAA form 7460-2 Part Two be filed within five days. At that time, the applicant will enter the most up-to-date information about the structure. Since the site elevations and heights will differ slightly from what was originally filed, the applicant will be required to file new studies for each point. The applicant would then file it as an existing building with the updated information. This ensures that all information is up to date in the database. This process will not require the building to be circularized to the public as long as the above mean sea level heights have not increased. At that time, a favorable

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determination would be issued for the existing building with the most up to date information.

Furthermore, the FAA No Hazard Determinations also specify the following 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's ASML 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 July 9, 2021, that it requests that all conditions stated in the FAA No Hazard Determination letter be followed and that the proposed development project adhere to the heights stipulated in the FAA's determination. Exceeding these heights would warrant reevaluation by the FAA and could result in substantial adverse effects to air navigation. The Port Authority further states that separate 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 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, the creation of new transit-oriented housing, 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 Board notes that FAA and DOB must be aware that the data provided to the FAA is different from what is shown on the plans, and Board approval is conditioned on FAA and DOB making the necessary adjustments to their records. The Board points out that the survey is in NAVD88; the site elevation ("SE") given to FAA is in NGVD; and the FAA Determination Letter of No Hazard site elevation is in NGVD. The height above mean sea level is the addition of the site elevation and height above ground level figures. FAA and DOB should be aware that there are disagreements between AMSL and the above ground level ("AGL") on the drawings as compared to the FAA Determinations of No Flight Hazard. The Board notes that no certificate of occupancy should be issued without these corrections.

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.

III.

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 within a C4-2 zoning district and partially within a C4-3 and zoning district—the development of an 11-story mixed-use, commercial, community facility and residential building that would not comply with height

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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 “Board Approved April 11, 2022”—Fourteen (14) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum building height of 148 feet above ground level and 185 feet above mean sea level, as illustrated on the Board-approved drawings;

THAT once the structure has reached the greatest height, it is required that FAA form 7460-2 Part 2 be filed within five days. At that time, the applicant will enter the most up-to-date information about the structure. Since the site elevations and heights will differ slightly from what was originally filed, the applicant will be required to file new studies for each point. The applicant would then file it as an existing building with the updated information. This ensures that all information is up to date in the database. This process will not require the building to be circularized to the public as long as the above mean sea level heights have not increased. At that time, a favorable determination would be issued for the existing building with the most up to date information;

THAT because the survey is in NAVD88; the site elevation (“SE”) given to FAA is in NGVD; and the FAA Determination Letter of No Hazard site elevation is in NGVD, FAA and DOB should be aware that there are disagreements between AMSL and AGL on the drawings as compared to the FAA Determinations of No Flight Hazard and should make the necessary adjustments in its record;

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. 2021-19-BZ”), shall be obtained within four years, by April 11, 2026;

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation under Aeronautical Study Nos. 2020-AEA-13134-OE, 2020-AEA-13135-OE, 2020-AEA-13136-OE, 2020-AEA-13137-OE, issued February 3, 2021, shall be followed, including:

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’s ASML 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, April 11, 2022.

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for adjourned hearing.

PUBLIC HEARINGS

MONDAY-TUESDAY, APRIL 11-12, 2022

2:00 P.M.

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

2019-256-BZ

APPLICANT – Sheldon Lobel, P.C., for SB1 Holdings LLC, owner.

SUBJECT – Application September 6, 2019 – Variance (§72-21) to permit the development of a 12-story mixed-use building, with ground floor commercial space (UG 6), and ambulatory diagnostic facility community space (UG 4) contrary to floor area (§§ 33-123) and parking (§ 36-21). C4-2 zoning district.

PREMISES AFFECTED – 1508 Avenue Z, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

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2020-71-BZ

APPLICANT – Eric Palatnik, P.C., for Strong River Properties LLC, owner.

SUBJECT – Application September 11, 2020 – 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.

PREMISES AFFECTED – 166 Coffey Street, Block 585, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021– Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district.

PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

2021-40-BZ

APPLICANT – Terminus Group, LLC, for 157 West 24th Street Lodging LLC, owner.

SUBJECT – Application June 18, 2021 – Variance (§72-21) to permit the development of a fifteen (15) story mixed-use building contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED –157 W 24th Street, Block 800, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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May 6, 2022

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HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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2022-25-A

88-63 75th Avenue, Block 3875, Lot(s) 0119, Borough of **Queens, Community Board: 5.**
Proposed enlargement of an existing dwelling partially within the bed of a mapped street
contrary to General City Law §35. R4B zoning district. R4B district.

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

CALENDAR

TELECONFERENCE PUBLIC HEARINGS MONDAY-TUESDAY, MAY 23-24, 2022 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, May 9th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday May 10th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

197-08-BZ

APPLICANT – Law Office of Jay Goldstein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application June 9, 2021 – Extension of Time to Complete Construction and Extension of Time to Obtain a CO of a previously approved Variance (§72-21) to permit a four-story and penthouse residential building which expired on June 18, 2021. R4 district.

PREMISES AFFECTED – 341 Troy Avenue, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

55-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yeshivas Novominsk, owner.

SUBJECT – Application October 1, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a proposed enlargement of an existing dormitory accessory to an existing school (*Yeshivas Novominsk*) which expires on December 10, 2021. R5 zoning district.

PREMISES AFFECTED – 1690 60th Street, Block 5517, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner

SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow the development of a commercial building which expired on June 20, 2021, Waiver of the Board's Rules of Practice and Procedures. C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEALS CALENDAR

2019-96-A thru 2019-155-A

APPLICANT – Rampulla Associates Architects, LLP, for ELOC FTK, LLC, owner.

SUBJECT – Application May 23, 2019 – Application to permit the construction of 48 two family and single family homes not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District.

PREMISES AFFECTED – Cole Street, Bluebelt Loop, Lookout Lane, Block 7558, Lot 65; Block 7564, Lot(s) 80,86; Block 7566; Block 7562, Lot(s) 1, 11, 16 thru 53, 190, 193, 91, 92, 84 thru 111, and 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

ZONING CALENDAR

2020-74-BZ

APPLICANT – Nasir J. Khanzada, for Arline R. Mallinson, owner; Jagjit Singh, lessee.

SUBJECT – Application September 16, 2020 – 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.

PREMISES AFFECTED – 1500 Williamsbridge Road, Block 4082, Lot 5, Borough of Bronx.

COMMUNITY BOARD #2BX

2022-10-BZ

APPLICANT – Sherry and O'Neill, for RFR/K 55 Prospect Owner LLC, owner; Vivvi, Inc., lessee.

SUBJECT – Application February 4, 2022 – Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Vivvi*) contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY, APRIL 25-26, 2022
10:00 A.M.**

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

PROPOSED RULEMAKING

Board of Standards and Appeals
Proposed Rule-Making Under the City Administrative Procedure Act (CAPA) – Draft Rules
Amending 2 RCNY § 1-08.1, § 1-08.2 regarding Environmental Review Requirements under the State Environmental Quality Review Act and City Environmental Quality Review.

SPECIAL ORDER CALENDAR

CORRECTION: This resolution adopted on April 25, 2022, under Calendar No. 528-71-BZ, is hereby corrected to read as follows:

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 150th Street, Block 12116, Lot 0001, Borough of Queens.

COMMUNITY BOARD # 12Q
ACTION OF THE BOARD – Application granted on condition.

THE VOTE –
Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –
The decision of the Department of Buildings (“DOB”), dated May 11, 2018, acting on Application Type Alteration 1 No. 421425390, reads in pertinent part: “The continued use and alteration of an existing service station in an R3-A zoning district is contrary to BSA Calendar Numbers 1063-27-BZ and 528-71-BZ.”

This is an application for a waiver of the Board’s

Rules of Practice and Procedures (“the Board’s Rules”); an extension of the term of a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the operation of an automotive service station Use Group (“UG”) 16B and expired on October 3, 1982; and an amendment to modify the terms specified as a condition in the Board’s grant and to legalize modifications to the signage, landscaping, site layout, and accessory building.

A public hearing was held on this application on June 15, 2020, after due notice by publication in *The City Record*, with continued hearings on January 11, 2021, April 26, 2021, June 14, 2021, and then to decision on April 25, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 12, Queens, recommends approval of this application on condition that the two storage units are enclosed with a fence at the back of the property line; a row of trees be planted to obstruct the noise and light from the neighboring residential properties; and a row of shrubs be replanted along the Conduit property line.

The Premises are located at the northeast intersection of 150th Street and North Conduit Avenue, within an R3A zoning district, in Queens. With approximately 166 feet of frontage along 150th Street, 114 feet of frontage along North Conduit Avenue, and 18,379 square feet of lot area, the Premises are currently occupied by an existing, UG 16, gasoline service station and a one-story 1,115 square foot building being operated as a gasoline service station with an accessory convenience store.

The Board has exercised jurisdiction over the Premises since July 19, 1932, when, BSA Cal. No. 1063-27-BZ, the Board granted a variance to permit the erection and maintenance of a gasoline service station in a business district on condition that the building proposed for the shelter and accommodation of the operators and patrons not exceed one story in height above grade be finished on all sides with light-colored enameled brick with dark-colored enamel brick or architectural terra cotta trim; no gasoline pump be located within 10 feet of the building on either street front; there be constructed along the building line on both street fronts a concrete curbing not less than 12 inches in height above grade; there be not more than two vehicular openings on North Conduit Boulevard (Old South Road) for the use and operation of the gasoline service and tow vehicular openings on Three Mile Mill Road (150th Street), none of which exceed a width of 12 feet in the clear at the building line with curb cuts in front thereof not more than 14 feet wide; any advertising displayed be restricted to front wall signs on the structure erected on the Premises and the glass globes of the gasoline pumps; the architect make a return of the drawings in accordance with the foregoing conditions for approval of this Board before submitting same to the Bureau of Buildings or Fire Department; all permits required be obtained within six months, by January 19, 1933, and any work involved thereby completed within one year, by July 19, 1933.

On July 23, 1957, under BSA Cal. No. 1063-27-BZ,

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the Board amended the resolution to permit the inclusion of the additional uses of an auto repair shop with hand tools only; the parking of motor vehicles awaiting service; and the extension in the area of a gasoline service station, lubricatorium, and auto laundry on condition that in the event that the owner desires to extend the area of the Premises as proposed and shown on Board-approved plans, such extensions may be permitted, as indicated on such plans; an additional pumps be installed, located as shown on plans of proposed conditions, provided such pumps are not nearer than 15 feet to the street building line; there be erected along the westerly lot line and returning along the northerly lot line, a masonry wall with steel pickets as proposed not less than 5 ft. 6 in. in height; such wall be of brick agreeing with the brick masonry of the accessory building; such additional space be paved with concrete or asphalt; except there be a plated area against the wall for a width not less than five feet at the west and approximately 15 feet to the north, plated with suitable planting material and properly protected with a concrete curbing not less than 10 inches in height and 6 inches in width; the proposed curb cut shown from this additional space to North Conduit Boulevard be held in abeyance pending further inspection by the Board as to the park area opposite; the sidewalk and curbing abutting the site be reconstructed or repaired to the satisfaction of the borough president; there be four additional 550-gallon approved gasoline storage tanks, making a total of twelve such tanks; as extended there be minor repairs with hand tools only maintained solely within the accessory building; under Section 7c the added space may be occupied for parking of motor vehicles awaiting service; and all permits, including a new certificate of occupancy, be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution.

On October 3, 1972, under the subject calendar number, the Board granted a variance, pursuant to Z.R. §§ 72-21 and 11-412, to permit, for a term of ten years, to expire on October 3, 1982, within an R3-2 zoning district, the enlargement in lot area and reconstruction of an automotive service station with accessory uses previously before the Board, on condition that all work substantially conform to the drawings filed with the application; and all laws, rules, and regulations applicable be complied with and substantial construction be completed within one year, by October 3, 1973.

On November 27, 1973, under the subject calendar number, the Board amended the resolution to extend the time to complete construction on condition that substantial construction be completed within one year, by November 27, 1974. On October 23, 1990, under BSA Cal. No. 1063-27-BZ, the Board further amended the resolution to change the design and arrangement of the existing automotive service station; to remove a portion of existing accessory building and to erect a 25'-4" x 13'-0" new portion to the remaining structure; to erect a new steel canopy over four new gasoline pumps islands with new "MPD" self-serve pumps and to eliminate all uses other than gasoline service station; substantially as shown on revised drawings of

proposed conditions on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and substantial construction be completed within one year, by October 23, 1991; and other than as amended, the resolution be complied with in all respects.

On March 17, 1992, under BSA Cal. No. 1063-27-BZ, the Board further amended the resolution to extend the time to complete substantial construction on condition that substantial construction be completed within 17 months from October 23, 1991, by March 23, 1993. On September 20, 1994, under BSA Cal. No. 1063-27-BZ, the Board further amended the resolution to legalize the addition of a retail convenience store located in an existing building, add diesel pump to an existing island and eliminate the previously approved guardrail, brick wall and fence located at the northeast rear lot line, substantially in compliance with revised drawings of existing and proposed conditions on condition that all site lighting be directed downward and away from adjacent residential uses; landscaping and fencing be provided in accordance with BSA approved plans; and other than as amended the resolution be complied with in all respects; and substantial construction be completed within one year, by September 20, 1995.

On November 12, 1997, under BSA Cal. No. 1063-27-BZ, the Board further amended to resolution to permit a 466 square foot enlargement to the existing 689 square foot accessory building which houses a retail convenience store on condition that the sales area be limited to 462 square feet; the entire establishment be operated by the same operator; the signs conform to the BSA approved drawings; all landscaping be installed and maintained in accordance with BSA approved drawings; the Premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application; and other than as amended, the resolution be complied with in all respects; and substantial construction be completed within one year, by November 12, 1998.

The Board notes that the approvals under BSA Cal. No. 1063-27-BZ have been superseded by the grant under the subject calendar number that allowed for the demolition of an existing building and the addition of floor area that would not have been allowed under Z.R. § 11-41. The Board seeks to make clear that all of the approvals under BSA Cal. No. 1053-27-BZ have been transferred to the subject calendar number.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed more than 10 years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(b)(4)(ii), of the Board's Rules to permit the filing of this application.

The applicant also seeks an amendment to the variance to modify the signage, landscaping, site layout, and accessory building. The applicant represents that the signage would have a total sign area of 75 square feet along 150th Street and 110 square feet along North Conduit Avenue and would comply with C1 zoning district signage regulations.

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As per the landscaping, the applicant proposed to maintain the existing landscaping at the Premises consisting of shrubs along the northeast side of the accessory building and a landscape bed on the southeast corner of the lot. Additionally, the applicant seeks to permit storage trailers to be located at the Premises as well as a shed in the rear of the accessory building. Finally, the applicant seeks to legalize changes to the interior building and maintain the existing footprint of the building, specifically the changes to the interior partition and the addition of a 422 square foot restaurant.

Over the course of hearings, the Board expressed concerns about the nature of the site and the vacant area at the rear of the site, which, although is not the subject of the use variance, required heavy landscaping to prevent a return to the parking lot use which previously occupied it; installation of curbing and fencing along the site; and compliance with the C1 zoning district signage regulations. In response to the concerns about the landscaping, the applicant submitted photographs demonstrating installed metal picket fencing around the vacant portion of the site with arbor vitae following the line of the fencing in planting bed and fencing and landscaping around the main portion of the site. Additionally, the applicant relocated an air vacuum, permitting more space for cars to park and submitted signage calculations showing compliance with C1 zoning district regulations.

By correspondence dated June 9, 2020, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application, and a review of its records indicates that the automotive service station is current with their Fire Department permits with respect to storage of combustible liquids, leak detection equipment, underground storage, and the fire suppression (dry-chemical) system. Based on the foregoing, the Fire 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.

Based upon its review of the record, the Board has determined that the extension of term of the variance and proposed amendments to legalize modifications to the signage, landscaping, site layout, and accessory building, 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 *amend* the resolution, dated July 19, 1932 as amended through November 12, 1997 so that as amended this portion of the resolution shall read: “to extend the term of the variance for 10 years, to expire on April 25, 2032 and to legalize noted modifications to the signage, landscaping, site layout, and accessory building; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received April 7, 2022 – Ten (10) sheets’; and *on further condition*:

THAT air vacuum on the western lot line must be relocated if development on the adjacent lots becomes conforming residential use to the R3A zoning district;

THAT the lumens spread level along the western lot

line must be brought to 0.0 if the development on the adjacent lots becomes conforming residential use to the R3A zoning district;

THAT all signs shall comply with C-1 district regulations;

THAT the vacant portion of the lot, which measures along 150th Street from the eastern property line to the beginning of the variance line 68.11 feet and has a depth of 107.08 feet, can only be used for purposes which conform to the R3A zoning district or for landscaping but cannot be used for commercial purposes;

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. 528-71-BZ’), shall be obtained within two years, by April 25, 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 25, 2022.

CORRECTION: This resolution adopted on April 25, 2022, under Calendar No. 110-99-BZIII, is hereby corrected to read as follows:

110-99-BZIII

APPLICANT – Law Office of Jay Goldstein, for Dkiuc & Company, LLC, owner.

SUBJECT – Application May 6, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive repair shop (Use Group 16B) which expired on June 27, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on September 18, 2016; Waiver of the Board’s Rules of Practice and Procedures. R6B zoning district.

PREMISES AFFECTED – 56-58 Kosciuszko Street, Block 1783, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Boards Rules of Practice and Procedures (“the Board’s Rules”); an

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extension of term for a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the operation of a Use Group (“UG”) 16B automotive repair shop and expired on June 27, 2020, with minor modifications to the previously approved plans; and an extension of time to obtain a certificate of occupancy, which expired on September 18, 2016.

A public hearing was held on this application on January 10, 2022, after due notice by publication in *The City Record*, with a continued hearing on March 14, 2022, and then to decision on April 25, 2022. Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood.

The Premises are located on the south side of Kosciuszko Street, between Bedford Avenue and Nostrand Avenue, within an R6B zoning district, in Brooklyn. With approximately 50 feet of frontage along Kosciuszko, 100 feet of depth, and 5,000 square feet of lot area, the Premises are occupied by a one-story, automotive repair shop.

The Board has exercised jurisdiction over the Premises since January 12, 1925, when, under BSA Cal. No. 1052-25-BZ, the Board granted a variance in the application of the use district regulations of the building zone resolution on condition that the building be restricted to a one-story structure above grade; any portion of the structure below grade be restricted to the maintenance and conduct of a boiler or heating plant for the Premises; the rear and gable walls be unpierced throughout their entire height and length; the front elevation be finished in face brick with architectural terra cotta or stone trimmings; there be no advertising signs or display permitted on the Premises other than one projecting electric sign, indicating the title of the garage; all permits necessary for the prosecution of the work be obtained within nine months, by October 12, 1925, and the building completed within 18 months, by July 12, 1925.

On June 27, 2000, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, within an R6 zoning district, the legalization of an existing garage and automotive repair shop (UG 16B), which is contrary to Z.R. § 22-10, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; a Charter Bus Establishment not be permitted at the subject Premises; there be no storage or repair of buses and/trucks at the subject Premises; the term of the variance be limited to 10 years, to expire on June 27, 2010; 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 Department; and substantial construction be completed in accordance with Z.R. § 72-23.

On September 18, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to permit an extension of the term of the variance for an additional ten years from the prior expiration, to expire on June 27, 2020 and to allow certain changes to the site plan, on condition

that all work substantially conform to drawings filed with the application; the term of the variance expire on June 27, 2020; all conditions from prior resolutions not specifically waived by the Board remain in effect; the above conditions and the conditions from the prior approval be noted on the certificate of occupancy; a certificate of occupancy be obtained by September 18, 2016; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the variance and time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed less than two years after the expiration of the term and more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules, of §§ 1-07.3(b)(2) and 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application.

The applicant represents that the same conditions which warranted the original grant still exist at the Premises. The applicant states that since it purchased the site from the former owner, the following modifications have been added at the Premises: 1) steam cleaned the entire front of the Premises; 2) repointed the bricks where necessary; 3) repainted the building façade to match the adjacent community facility building; 4) replaced all roll down gates where needed and repainted the gates; 5) stored all refuse containers inside the building; 6) removed any and all parking barriers the prior owner had placed on the street; 7) upgraded interior offices and restrooms to create a waiting room for clients, thereby keeping them off the street; 8) repaired, cleaned, and painted interior of the garage; 9) upgraded all interior electrical to energy efficient systems; 10) installed rubberized roof system with exterior insulation board, six inch fiberglass insulation rolls between the beams with 5/8” sheetrock installed at the ceiling, in order to reduce noise which may emanate from the garage. The applicant further posits that because the Premises were sold subsequent to the prior approval, and the new owner sought to clear open violations which has prevented procurement of the certificate of occupancy. The applicant declares that this approval is the only item preventing an issuance of a certificate of occupancy.

Over the course of hearings, the Board expressed concerns about the neighboring property at 54 Kosciuszko Street, which the applicant also owns and if there is direct access between the two sites and parking at the site. In response, the applicant submitted images of the installed “No Parking on Sidewalk” sign and a Management Plan that describes how cars are stored at the subject lot and in the adjacent lot. The Management Plan states in pertinent part:

The Premises can accommodate 9 cars, while the property at 54 Kosciuszko Street can

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accommodate 18 cars. To ensure that cars are parked only inside the property, the repair shop employs 3 valet drivers, who then park the car in one of the available spaces. This method is to ensure that customers do not park on the sidewalk and crowd the block.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans and time to obtain a certificate of occupancy 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 January 12, 1925, as amended through September 18, 2015, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on June 27, 2030, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Board Approved: April 25, 2022 – Seven (7) sheets’; and *on further condition*;

THAT there be no parking on the sidewalk;

THAT the dumpster must be kept inside building at all times, expect for trash pickup;

THAT all lighting will be positioned down and away from residential uses;

THAT charter bus establishments shall not be permitted at the subject Premises;

THAT there be no storage or repair of buses and trucks at the subject 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. 110-99-BZ’), shall be obtained within two years, by April 25, 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 25, 2022.

263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Roman Midyany, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-622) to permit the enlargement of an existing single family which expired December 12, 2021. R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and an extension of time to obtain a certificate of occupancy for a variance, granted pursuant to Z.R. § 72-21, which expired on December 12, 2021 and permitted the enlargement of an existing single-family residence that does not comply with floor area, lot coverage, open space, front yard, and side yard regulations, contrary to Z.R. §§ 23-142, 23-45(a), and 23-461.

A public hearing was held on this application on March 14, 2022, after due notice by publication in *The City Record*, and then to decision on April 25, 2022.

The Premises are located on the northeast corner of Oriental Boulevard and Norfolk Street, within a R3-1 zoning district, in Brooklyn. With approximately 25 feet of frontage along Oriental Boulevard, 200 feet of frontage along Norfolk, and 2,500 square feet of lot area, the Premises are occupied by a one-story, single-family residence.

The Board has exercised jurisdiction over the Premises since December 12, 2017, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, within an R3-1 zoning district, the enlargement of an existing single-family residence that does not comply with floor area, lot coverage, open space, front yards, and side yards, contrary to Z.R. §§ 23-142, 23-45(a), and 23-461, on condition that all work substantially conform to drawings filed with the application; the following be the bulk parameters of the site: a maximum FAR of 0.95 (2,397 square feet of floor area), a maximum of 42 percent of lot coverage, at least 1,454 square feet of open space, two front yards measuring at least 1'-1" and 15 feet and two side yards of 4'-6" and 31'-2", as reflected on the BSA-approved plans; mitigation elements required pursuant to Z.R. § 64-61 be provided as determined by DOB; substantial construction be completed pursuant to Z.R. § 72-23; a certificate of occupancy be obtained within four years; 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

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

The time to complete construction and obtain a certificate of occupancy having expired, the applicant now seeks an extension. Since the Board's initial approval, the applicant states that it has experienced numerous delays related to the COVID-19 Pandemic and global shipping issues. The applicant represents that at the time of application, it has removed the existing roof and interior partitions and excavated for the new footings/foundation.

At hearing, the Board raised concerns regarding movement on the project within the four years since the prior BSA approval, as submitted photographs from September 2021 only showed a work site behind an eight-foot construction fence. In response, the applicant submitted recent photographs of the site that show the proposed residence completely enclosed and ready for windows as well as a timeline of the remaining work and anticipated completion dates.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and to obtain the certificate of occupancy 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 12, 2017, so that as amended, this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, to expire on April 25, 2026, *on condition*:

THAT the following shall be the bulk parameters of the site a maximum FAR of 0.95 (2,397 square feet of floor area), a maximum of 42 percent of lot coverage, at least 1,454 square feet of open space, two front yards measuring at least 1'-1" and 15 feet and two side yards of 4'-6" and 31'-2", as reflected on the BSA-approved plans;

THAT mitigation elements required pursuant to Z.R. § 64-61 shall be provided as determined by DOB;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, within four years, by April 25, 2026;

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. 263-14-BZ'), shall be obtained within four years by April 25, 2026;

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 25, 2022.

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

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for adjourned hearing.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board's Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for continued hearing.

433-61-BZ

APPLICANT – Kenny Lee, AIA, for Shin J Yoo, owner.

SUBJECT – Application August 3, 2021 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations which expired on July 18, 2021: R7A zoning district.

PREMISES AFFECTED – 1702-1712 East 16th Street, Block 6798, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for postponed hearing.

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.

SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a retail or service establishment (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice

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of Procedures. R4 zoning district.
PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for decision, hearing closed.

286-86-BZ

APPLICANT – Michael Carin, for George Kotsonis, owner; 808 Union Street LLC, lessee.

SUBJECT – Application March 10, 2021 – Extension of Term of a previously approved Variance (72-21) which permitted the operation of a physical cultural establishment (*Slope Fitness*) which expired on April 27, 2019. C1-3/R6A zoning district.

PREMISES AFFECTED – 100 7th Avenue aka 808 Union Street, Block 957, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over PCE for postponed hearing.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

214-06-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application April 2, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expires on April 10, 2022; Amendment to permit the conversion of automotive repair bays to accessory convenience store. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, Block 10509, Lot 0265, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

2017-67-BZ

APPLICANT – Sa fanya Matavov

SUBJECT – Application November 8, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single-family home which will expire on January 9, 2022. R3-2 zoning district.

PREMISES AFFECTED – 2714 Avenue R, Block 6833, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2016-900-A, 2016-981-A, 2016-992-A, 2016-1058-A

APPLICANT – NYC Housing Preservation and Development, for Project Rebuild Inc., owner.

SUBJECT – Application August 24, 2021 – Amendment application for four (4) previously approved GCL 36 applications previously part of the NYC Build it Back program, under the acquisition pathway. NYC HPD “Project Rebuild” has acquired these properties for demolition and reconstruction of affordable, resilient housing. Amendment request under BSA Rule 1-06.1(f) to modify the Board’s condition that the approval be limited to the Build it back Program.

PREMISES AFFECTED – 25 Wavecrest Street, Block 4081, Lot 0027, 16 Topping Street, Block 4085, Lot 0046, 18 Center Place, Block 4084, Lot 0049, 54 Sea foam Street, Block 4081, Lot 0061. 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for a waiver under the Board’s Rules of Practice and Procedures (“the Board’s Rules”) § 1-06.1(f) to modify the Board’s condition for four previously approved General City Law (“GCL”) § 36 applications, which were part of the New York City Build It Back Program, under the acquisition pathway. Since the initial grant, the properties have been acquired by NYC Housing and Preservation Department (“HPD”) from Project Rebuild, Inc. for the demolition and reconstruction of affordable, resilient housing, and the applicant now seeks to

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modify the condition that the approval be limited to the Build It Back Program.

A public hearing was held on this application on January 24, 2022, after due notice by publication in *The City Record*, and then to decision on April 25, 2022.

25 Wavecrest Street is located on the northeast side of Wavecrest Street, between Dustan Street and Cedar Grove Avenue, within an R3X zoning district, in Staten Island. With approximately 30 feet of frontage along Wavecrest Street, 60 feet of depth, and 1,520 square feet of lot area, the Premises are occupied by a two-story, detached, single family residence. 16 Topping Street is located on the northwest side of Topping Street, between Dustan Street and Cedar Grove Avenue, within an R3X zoning district, in Staten Island. With approximately 40 feet of frontage along Topping Street, 62 feet of depth, and 2,480 square feet of lot area, the Premises are currently vacant. 18 Center Place is located on the northwest side of Center Place, between Dustan Street and Cedar Grove Avenue, within an R3X zoning district, in Staten Island. With approximately 20 feet of frontage along Center Place, 62 feet of depth, and 1,240 square feet of lot area, the Premises are currently vacant. 54 Seafoam Street is located on the southwest side of Seafoam Street, between Dustan Street and Cedar Grove Street, within a C1-1 (R3-2) zoning district, in Staten Island. With approximately 40 feet of frontage along Seafoam Street, 60 feet of depth, and 2,400 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since January 22, 2016, when, under BSA Cal. Nos. 2016-992-A, 2016-981-A, 2016-900-A, and 2016-1058-A, the Board waived its Rules of Practice and Procedures and granted four waivers of General City Law § 36 to permit the elevation or reconstruction of four single-family residences that do not front on mapped streets on condition that the building have a fire sprinkler in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt; the building be provided with interconnected smoke and carbon monoxide alarms designed and installed in accordance with Section 907.2.11 of the New York City Building Code; that the underside of the exterior of the building where the foundation is not closed have a floor assembly that provides a two hour fire resistance rating; the height from grade plan to the highest window-sill leading to a habitable space not exceed 32'-0"; the approval be limited to the Build it Back Program; the approval is limited to proposals for elevation or reconstruction of previously existing structures, insofar as the applicant proposes, instead, to repair the building or other structure on subject lot, this waiver be void as necessary; the applicant provide the Board with a full set of approved plans upon DOB's issuance of a certificate of occupancy for the subject building or structure; 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 applicant represents that the subject sites were purchased by the City of New York, in a Uniform Land Use Review Procedure ("ULURP") process in which ownership was assigned to the NYC Department of Citywide Administrative Services ("DCAS") by letter and then HPD took ownership. In support of this contention, the applicant provided the ULURP document and assignment of jurisdiction letter from DCAS.

Based upon its review of the record, the Board has determined that the amendment to the conditions of the original grants, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby waive its Rules of Practice and Procedure and amend the resolutions dated January 12, 2016, so that as amended, this portion of the resolution shall read: "the Board authorizes a waiver of GCL § 36, on condition that the proposed elevation or reconstruction will comply with all applicable zoning district requirements and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*

THAT each building shall have a fire sprinkler in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt;

THAT each 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

THAT that the underside of the exterior of each building where the foundation is not closed have a floor assembly that provides a two-hour fire resistance rating;

THAT the height from grade plan to the highest window-sill leading to a habitable space may not exceed 32'-0";

THAT the approval is limited to proposals for elevation or reconstruction of previously existing structures, insofar as the applicant proposes, instead, to repair the building or other structure on subject lot, this waiver be void as necessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a certificate of occupancy for the subject building or structure;

THAT the terms of the grant must be included in the HPD regulatory agreement that travels with the sale to the for-profit developer; 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, April 25, 2022.

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2016-2424-A, 2016-2425-A, 2016-2426-A, 2016-2431-A, 2016-2459-A, 2016-2468-A, 2016-2712-A, 2016-2715-A, 2016-2741-A, 2016-2745-A, 2016-3093-A, 2016-3117-A, 2016-3827-A, 2016-3826-A,

APPLICATION – NYC Housing Preservation and Development, for Project Rebuild Inc., owner.

SUBJECT – Amendment application for fourteen (14) previously approved GCL 35 applications previously part of the NYC Build it Back program, under the acquisition pathway. NYC HPD “Project Rebuild” has acquired these properties for demolition and reconstruction of a affordable, resilient housing. Amendment request under BSA Rule 1-06.1(f) to modify the Board's condition that the approval be limited to the Build it back Program.

PREMISES AFFECTED – 770 Patterson Avenue, Block 3873, Lot 0028, 176 Kiswick Avenue, Block 3736, Lot 0020, 181/183/185/187 Moreland Street, Block 3734, Lots 0038/0039/0041, 529 Greeley Avenue, Block 3881, Lot 0001, 1142/1144 Olympia Boulevard, Block 3884, Lots 0014/0015, 457 Lincoln Avenue, Block 3738, Lot 0005, 477/479 Mill Road, Block 4030, Lots 0024/0026, 208/214 Wiman Avenue, Block 5306, Lots 0055/0058. 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 Scibetta5

Negative:0

THE RESOLUTION –

This is an application for a waiver under the Board’s Rules of Practice and Procedures (“the Board’s Rules”) § 1-06.1(f) to modify the Board’s condition for 14 previously approved General City Law (“GCL”) § 35 applications, which were part of the New York City Build It Back Program, under the acquisition pathway. Since the initial grant, the properties have been acquired by NYC Housing and Preservation Department (“HPD”) from “Project Rebuild, Inc.” for demolition and reconstruction of a affordable, resilient housing, and the applicant now seeks to modify the condition that the approval be limited to the Build It Back Program.

A public hearing was held on this application on January 24, 2022, after due notice by publication in *The City Record*, and then to decision on April 25, 2022.

181 Moreland Street is located on the northwest side of Moreland Street, between Bedford Avenue and Midland Avenue, within an R3-1 zoning district, in Staten Island. With approximately 20 feet of frontage along Moreland Street, 74 feet of depth, and 1,480 square feet of lot area, the Premises are currently vacant. 185 Moreland Street is located on the northwest side of Moreland Street, between Bedford Avenue and Midland Avenue, in an R3-1 zoning district, in Staten Island. With approximately 40 feet of frontage along Moreland Street, 74 feet of depth, and 2,960

square feet of lot area, the Premises are currently vacant. 187 Moreland Street is located on the northwest side of Moreland Street, between Bedford Avenue and Midland Avenue, within an R3-1 zoning district, in Staten Island. With approximately 20 feet of frontage of Moreland Street, 74 feet of depth, and 1,480 square feet of lot area, the Premises are currently vacant. 185 Moreland Street is located on the northwest side of Moreland Street, between Bedford Avenue and Midland Avenue, within an R3-1 zoning district, in Staten Island. With approximately 40 feet of frontage along Moreland Street, 74 feet of depth, 2,960 square feet of lot area, the Premises are currently vacant.

176 Kiswick Street is located on the southwest side of Kiswick Street, between Bedford Avenue and Midland Avenue, within an R3-1 zoning district, in Staten Island. With approximately 20 feet of frontage along Kiswick Street, 100 feet of depth, and 2,000 square feet of lot area, the Premises are currently vacant. 457 Lincoln Avenue is located on the northeast side of Lincoln Avenue, between Moreland Street and Mason Avenue, within an R3-1 zoning district, in Staten Island. With approximately 30 feet along Lincoln Avenue, 62 feet of depth, and 1,860 square feet of lot area, the Premises are currently vacant. 770 Patterson Avenue is located at the southeast corner of Patterson Avenue and Mapleton Avenue, within an R3-2 zoning district, in Staten Island. With approximately 100 feet of frontage along Patterson Avenue, 40 feet of depth, and 4,000 square feet of lot area, the Premises are currently vacant.

529 Greeley Avenue is located on the northeast intersection of Greeley Avenue and Grimsby Street, within an R3-1 zoning district, in Staten Island. With approximately 60 feet of frontage along Greeley Avenue, 100 feet of depth, and 6,000 square feet of lot area, the Premises are currently vacant. 1142 Olympia Boulevard is located on the southwest side of Olympia Boulevard, between Lincoln Avenue and Greeley Avenue, within an R3-1 zoning district, in Staten Island. With approximately 23 feet of frontage along Olympia Boulevard, 100 feet of depth, and 2,365 square feet of lot area, the Premises are occupied by a one-story, single-family residence. 1144 Olympia Boulevard is located on the southwest side of Olympia Boulevard, between Lincoln Avenue and Greeley Avenue, within an R3-1 zoning district, in Staten Island. With approximately 16 feet along Olympia Boulevard, 100 feet of depth, and 1,635 square feet of lot area, the Premises are currently occupied by a two-and-a-half story, single-family residence.

208 Wiman Avenue is located on the southwest side of Wiman Avenue, between Hylan Boulevard and Tennyson Drive, within an R3-1 zoning district and the Special South Richmond Development District, in Staten Island. With approximately 25 feet of frontage along Wiman Avenue, 135 feet of depth, and 3,375 square feet of lot area, the Premises are occupied by a one-story, single-family residence. 214 Wiman Avenue is located on the southwest side of Wiman Avenue, between Hylan Boulevard and Tennyson Drive, within an R3-1 zoning district and the Special South Richmond Development District, in Staten

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Island. With approximately 25 feet of frontage of along Wiman Avenue, 135 feet of depth, and 3,375 square feet of lot area, the Premises are occupied by a two-story, two-family residence. 479 Mill Road is located on the south side of Old Mill Road, between Isabella Avenue and Guyon Avenue, within an R3-1 zoning district, in Staten Island. With approximately 25 feet of frontage along Old Mill Road, 119 feet of depth, and 2,575 square feet of lot area, the Premises are occupied by a two-and-a-half story, single-family residence. 477 Mill Road is located on the south side of Old Mill Road, between Isabella Avenue and Guyon Avenue, within an R3-1 zoning district, in Staten Island. With approximately 30 feet of frontage along Old Mill Road, 130 feet of depth, and 3,900 square feet of lot area, the Premises are occupied by a two and 1/2 story, single-family residence.

The Board has exercised jurisdiction over the Premises since March 8, 2016, when, under BSA Cal. Nos. 2016-2424-A, 2016-2425-A, 2016-2426-A, 2016-2431-A, 2016-2459-A, 2016-2468-A, 2016-2712-A, 2016-2715-A, 2016-2741-A, 2016-2745-A, 2016-3093-A, 2016-3117-A, 2016-3826-A, and 2016-3827-A, the Board waived its Rules of Practice and Procedures, granted 14 waivers of General City Law § 36, and also waived the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Z.R. § 72-01(g) on condition that the proposed elevation or reconstruction comply with all applicable zoning district requirements; all other applicable laws, rules, and regulations be complied with; no building or other structure be constructed over an existing NYC Department of Environmental Protection (“DEP”) managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; 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 five feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed and surveyor, unless DEP has notified the NYC Department of Buildings (“DOB”) that such limitation does not apply; 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 five feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; 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 remain within five feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase, and/or porch may not be within five 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; all buildings or other structures, including exterior stairs, not be constructed within planned DEP Capital Project as indicated on NYC Department of Design and Construction’s (“DDC”) Damages Map and/or Acquisitions plan as of September 15, 2015; all buildings or other structures, including exterior stairs, not be constructed within a planned NYC Department of Transportation (“DOT”) Capital Project as indicated on the DDC’s Damages Map and/or Acquisitions plan as of September 15, 2015, or as indicated in writing by the DDC; 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 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 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, have an exterior assembly that provides a two-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space not exceed 32’-0”; the approval be limited to the Build It Back Program; the approval is limited to proposals for the elevation or reconstruction of previously existing structures insofar as the applicant proposes, instead, to repair the building or other structures on the subject lot, the waiver be void as unnecessary; the applicant provide the Board with a full set of approved plans upon DOB’s issuance of a certificate of occupancy for the subject building or other structure; DOB review and approve plans associated with the Board’s approval for compliance with underlying zoning regulations as if the unbuilt portion of the street were not mapped; and 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.

The applicant represents that the subject sites were purchased by the City of New York, in a Uniform Land Use Review Procedure (“ULURP”) process in which ownership was assigned to the NYC Department of Citywide Administrative Services (“DCAS”) by letter and then HPD took ownership. In support of this contention, the applicant provided the ULURP document and assignment of jurisdiction letter from DCAS.

Furthermore, the Board notes that because the initial grants are for GCL § 35 waivers, and DOB may raise objections about yard and setback requirements, the applicant may request changes to the design of the buildings by letter of substantial compliance rather than by amendment since it does not yet know how projects will be sited.

Based upon its review of the record, the Board has determined that the amendment to the conditions of the

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original grants, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby waive its Rules of Practice and Procedure and amend the resolutions dated March 8, 2016, so that as amended, this portion of the resolution shall read:

“the Board authorizes a waiver of GCL § 35 and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Z.R. § 72-01(g), on condition that the proposed elevation or reconstruction will comply with all applicable zoning district requirements and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*

THAT no 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 five feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed and 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 five 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 five feet of DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase, and/or porch may not be within five 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 all buildings or other structures, including exterior stairs, not be constructed within planned DEP Capital Project as indicated on DDC Damages Map and/or Acquisitions plan as of September 15, 2015;

THAT all buildings or other structures, including exterior stairs, not be constructed within a planned DOT Capital Project as indicated on the DDC’s Damages Map and/or Acquisitions plan as of September 15, 2015, or as indicated in writing by the DDC;

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 two-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 is limited to proposals for the elevation or reconstruction of previously existing structures insofar as the applicant proposes, instead, to repair the building or other structures on the subject lot, the waiver be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB’s issuance of a certificate of occupancy for the subject building or other structure;

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

THAT the terms of the grant must be included in the HPD regulatory agreement that travels with the sale to the for-profit developer; 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, April 25, 2022.

2020-39-A

APPLICANT – AVID Architecture, for Danny Lin, owner.
SUBJECT – Application May 4, 2020 – Proposed construction of a single-family residence, within the bed of a mapped street, contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 235 Oder Avenue, Block 2887, Lot 19, 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 –

I.

The decision of the Department of Buildings, dated April 15, 2020, acting on New Building Application No. 510115563 reads in pertinent part: “Proposed building in

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bed of mapped street contrary to GCL 35.”

This is an application under General City Law (“GCL”) § 35 to permit, in an R3A zoning district, the construction of a single-family residence within the bed of a mapped street.

A public hearing was held on this application on December 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on March 15, 2022, and then to decision on April 25, 2022. Community Board 1, Staten Island, recommends denial of this application stating: “Motion made to deny the application based on the lot being subdivided by choice, and none of the other homes on the street are built to the widening line.”

The Premises are located on the southeast corner of the intersection of Oder Avenue and Steuben Street, within an R3A zoning district, in Staten Island. With approximately 35 feet of frontage along Oder Avenue, 100 feet of frontage along Steuben Street, and 3,500 square feet of lot area, the Premises are currently vacant.

II.

GCL §35, in relevant part, provides that the Board may approve permits for development within the bed of mapped streets, as follows:

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the City has not acquired title thereto, the City may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the City.

III.

The applicant proposes to construct a new two-story, plus cellar and attic, single-family residence that would comply with the underlying requirements of the R3A zoning district with proposed 2,008 square feet of floor area (0.58 FAR), a front yard with a depth of 20’ at the first floor and above, two side yards measuring 20.0’ and 7.75’, a perimeter wall height of 24.25’, and building height of 30.25’. The applicant also represents that the proposed project would provide two parking spaces.

As per the requirements under GCL § 35, the applicant represents that as the subject lot is located in the bed of the mapped but unbuilt Steuben Street, which is an existing two-way road that is paved, improved, and maintained by the City of New York. By letter dated January 28, 2021, the New York City Department of Transportation (“DOT”) states that regarding 235 Oder Avenue, there are no scheduled Capital Projects for the immediate future.

IV.

By letter dated December 6, 2021, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application materials. A review of its records indicates that the application has not been filed with the Bureau of Operations, City Planning Unit for review. A

review of this application is required due to the proposed street widths being less than 34 feet in width, contrary to 2014FC Section 503.2.3. Oder Avenue, as shown on survey is 29.9 feet and Steuben Street is 24.0 feet. Based on the foregoing, the Fire Department “objects” to the application. The Bureau of Fire Prevention respectfully requests that the Board of Standards and Appeals direct the applicant to file with the Fire Department for modification of Fire Code, as described in 2014FC Section 104.8. By correspondence dated December 6, 2021, the Fire Department states that since the proposed structure fronts on two streets that are less than 34 feet, a variance is required from the Fire Department’s City Planning Unit. Since these two streets (Oder and Steuben Street) are less than the required width for fire apparatus access hence the required variance. According to the “BSA Notes” on sheet Z-001.00, note number four states “No requirement for the installation of a fire alarm or sprinkler system”. This note will need to be revised deleting “sprinkler system” to be acceptable by FD’s City Planning Unit.

By letter dated December 10, 2021, the New York City Department of Environmental (“DEP”) states that there is an existing 12” diameter (“dia.”) City water main in Steuben Street between Oder Avenue and Britton Avenue. The Drainage Plan No: PRD-2D, sheet 4 of 9, dated November 21, 1973, for the subject site, shows 10” dia. sanitary sewer and 36” dia. storm sewer in Steuben Street between Oder Avenue and Britton Avenue. The applicant has submitted a survey, dated April 29, 2021, which shows 70’-0” width of the mapped Steuben Street between Oder Avenue and Britton Avenue, from 40’-0” is available for the installation, maintenance and/or reconstruction of the future and existing sewers and water main. Based on this information, DEP has no objections to the proposed GCL § 35 application.

By correspondence dated February 7, 2022, DOT states that it has reviewed the applicant’s documents dated December 7, 2021. According to the Staten Island Borough President’s Topographical Bureau, Steuben Street between Oder Avenue and Britton Avenue is mapped at a width of 70 feet and has a Corporate Counsel of Opinion (“CCO”) for 40 feet, as-in-use, dated October 25, 1974. The City does not have title. Oder Avenue between Steuben Street and Saunders Street is mapped at 60 feet and has a CCO for 50 feet, as-in-use on February 7, 1929. Due to the fact that lot 19 is entirely within the mapped right-of-way of Steuben Street, abutting lot 16 is City-owned and that there are no other structures built within the mapped right of way along Steuben Street, DOT strongly recommends the applicant submit an application for City Map Change with the Department of City Planning (“DCP”) for demapping of this portion of Steuben Street in this block. This would negate the need for a Board of Standards and Appeals approval and remove this portion of Steuben Street from the City Map.

At hearings, the Board raised concerns regarding the required street trees at the subject Premises and the materials to be used during construction of the proposed residence, including the sprinklering at the Premises. In

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response, the applicant submitted a revised site plan which included the required street trees of four trees facing Steuben Street and one tree fronting on Oder Avenue. Additionally, the applicant submitted a Builder's Pavement Plan ("BPP") showing a five-foot-wide sidewalk along Steuben Street and a seven-foot-wide sidewalk along Oder Avenue as well as a three-foot-wide grassed area along both curbs and revised plans with a note that the proposed residence would be fully sprinklered, and the residence would have Hardi-Board and cultured stone veneer finish.

Accordingly, 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 April 15, 2020, acting on New Building Application No. 510115563, under the powers vested in the Board by Section 35 of the General City Law, to *permit* the construction of a building located within the bed of a mapped street *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved April 25, 2022"- Ten (10) sheet; and *on further condition*:

THAT the building is fully sprinklered;

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. 2020-39-A"), shall be obtained within four years, by April 25, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, April 25, 2022.

2021-68-A

APPLICANT – Bernard Kho, R.A., for Dean Johanson, owner.

SUBJECT – Application October 22, 2021 – Proposed development of a NYC School Construction Authority (SCA) school building located on a site not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district. Special South Richmond Development District.

PREMISES AFFECTED – 348A Deisius Street, Block 6566, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 –

I.

The decision of the Department of Buildings, dated September 23, 2021, acting on New Building Application No. 500876885 reads in pertinent part: "The proposed building does not have access to a legally mapped street, which is contrary to Article 3, Section 36 of the General City Law, therefore, obtain BSA approval."

This is an application under General City Law ("GCL") § 36 to permit, in an R1-2 zoning district and the Special South Richmond Development District, the development of an New York City School Construction Authority ("SCA") school building located on a site not fronting on a mapped street.

A public hearing was held on this application on April 11, 2022, after due notice by publication in *The City Record*, and then to decision on April 25, 2022. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on a corner lot bounded by Deisius Street to the north, Stecher Street to the east, Eylandt Street to the south, and Kingdom Avenue to the west, within an R1-2 zoning district and the Special South Richmond Development District, in Staten Island. With approximately 211 feet of frontage along Deisius Street, 530 feet of depth, and 115,300 square feet of lot area, the Premises are currently occupied by an existing three-story public school, P.S. 5 Richmond, an early childhood play area with play equipment, a playground, and a one-story annex addition.

II.

GCL § 36 (2) states, in part:

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

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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.

III.

The applicant proposes to construct a new three-story plus cellar building adjacent to the existing three-story P.S. 5 Richmond school facility, with the main entrance for the proposed building along Deisius Street. The applicant represents that the new building would have physical connection enabling circulation access between the proposed addition and the existing building on floors one through three. Additionally, the applicant states that the new project would include a new 3,200 square foot play area, a 45,819 square foot playground, and 3,424 square feet of bioswale areas to meet Department of Environmental Protection ("DEP") municipal separate storm sewer system requirements ("MS4").

By letter dated February 10, 2021, the Office of the Staten Island Borough President states that Deisius Street along the subject site has a record width of 60 feet; does not appear on the final New York City map; and is the subject of an Opinion of Dedication, dated December 27, 1999, as in-use for 35 to 49 feet in width. Furthermore, Kingdom Avenue along the subject site has a record width of 60 feet; does not appear on the final New York City map; and is the subject of an Opinion of Dedication as in-use for 60 feet in width, dated March 12, 1931. Additionally, Eylandt Street at the subject site has a record width of 70 feet; does not appear on the final New York City map; and is the subject of an Opinion of Dedication as in-use for 29 feet in width, dated February 23, 2000. Moreover, Stecher Street from the southeast side of Deisius Street to a point +/-286 ft southeasterly has a record width of 60 feet; does not appear on the final New York City map; and is the subject of an Opinion of Dedication as in-use for 40 feet in width, dated January 5, 2000. Stecher Street from a point +/-286 southeast of the southeastern record line of Deisius Street to the Northwest side of Eylandt Street has a record width of 60 feet; does not appear on the final New York City map; and has no title or Opinion of Dedication.

Pursuant to the GCL § 36 requirements, the applicant represents that because all streets surrounding the project site are unmapped, if GCL § 36 (2) is enforced, the permit application for the proposed addition would not be approved by DOB, and, therefore, the project could not move forward.

The applicant represents that without DOB approval, it would be prevented from relieving the current overcrowded conditions with additional capacity and would hinder School District No. 31 from accommodating forecast changes in student enrollments. Furthermore, the applicant represents that it would make it more difficult for the NYC Department of Education ("DOE") to meet its goal of class size reduction and transitioning from the use of portable classrooms.

Moreover, the applicant represents that in order to facilitate this project, the SCA received Mayoral Overrides on April 7, 2022 related to the zoning envelope and parking space requirements noted below. Per the SCA's enabling legislation, the SCA is exempt from the Uniform Land Use Review Procedure ("ULURP") and is able to seek necessary zoning overrides from the Deputy Mayor for Economic and Workforce Development. The applicant states that it has received the following Mayoral Overrides:

- a. The proposed new building would not comply with certain bulk zoning requirements regarding the front yard setback (Z.R. § 24-34), max height of front wall, and the sky exposure plane (Z.R. § 24-521) due to its proposed location within the zoning lot, therefore a zoning variance is requested for these Z.R. sections. The applicant represents that this design facilitates ADA accessibility to all floors of the existing building utilizing the new elevators in the new building. Furthermore, the applicant states that the proposed location also minimizes the impact to the existing historical State Historic Preservation Office ("SHPO") eligible building and requires no rearrangement of the existing building's spaces to facilitate connection.
- b. A zoning override for the required number of parking spaces indicated in the zoning resolution (Z.R. § 25-30) is also requested, as the applicant represents that the SCA is not able to provide the required parking of 29 spaces (per Z.R. § 25-30 requires one parking space per 1,500 square feet of floor area and $442,393 \text{ square feet} / 1500 \text{ square feet} = 28.262 = 29 \text{ spaces}$) as it would greatly impact the available space for the expanded and upgraded playground that is needed to meet the expanded student population. Furthermore, the applicant states that the construction of a bioswale and its drainage system to meet DEP MS4 requirements would further reduce the available outdoor area.

At hearing, the Board raised concerns that the applicant need comply with the Department of Transportation ("DOT"), School Safety's comments dated March 21, 2022, 1) to install a curb and a sidewalk along the north side of Eylandt Street between Kingdom Avenue and Stecher Street; 2) provide a 13' sidewalk and uniform curb

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alignment along the school frontage on Kingdom Avenue from Deisius Steet to Eylandt Street, matching the existing alignment from Deisius Street; 3) if SCA is resurfacing at Kingdom Avenue and Deisius Street: Provide receiving pedestrian ramps across Deisius Street; 4) to extend paving to stop sign at northeast corner of Kingdom Avenue Eylandt Street to prevent outgrowth on an accessible path; 5) to provide receiving ramps at the northwest corner of Kingdom and Eylandt; 6) to remove the proposed planting strip along the school fence on Stecher Street and replace it with a concrete sidewalk; and 7) all the "SCHOOL" markings be removed from the Builder's Pavement Plan ("BPP"). In response, the applicant provided an updated BPP and Technical Memo which included the requested changes.

IV.

By letter dated April 25, 2022, the Fire Department states that the Fire Department, Bureau of Operations and Fire Prevention has reviewed the application materials. An application has been filed with its office and a preliminary review shows compliance with applicable regulations of the Fire Department of the City of New York with respect to fire apparatus access road and location of fire hydrants. Based upon the foregoing, the Fire Department hereby issues a "Conditional Letter of No Objection" to the application. If conditions are found not to be in compliance with the NYC Fire Code, the Fire Department will notify the SCA and the Board of Standards and Appeals of such non-compliance.

The project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4. On October 21, 2021, SCA issued a Negative Declaration, SEQR No. 21-011, prepared in accordance with Article 8 of the Environmental Conservation Law 6 NYCRR Part 617. The SCA conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Form ("EAF") and Supplemental Studies, SEQR No. 21-011, dated October 21, 2021. The EAF documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction.

For Historic and Cultural Resources, to avoid any construction related impacts on the State/National Register eligible existing P.S. 5 Richmond school building on the property, the applicant represents that it would prepare a Construction Protection Plan ("CPP") to be implemented in consultation with a licensed professional engineer implemented prior to the commencement of any construction activities on the site. For Hazardous Materials, the applicant states that a soil vapor barrier and sub-slab depressurization system would be integrated into the new addition design. Additionally, the applicant declares that all

soil excavated during the building addition construction would be managed in accordance with all applicable local, state, and federal regulations. Furthermore, the applicant posits that for areas of the project site where exposed soils may exist after the new building addition is constructed (e.g., landscaped areas), two feet of environmentally clean fill would be placed over the soils. Moreover, the applicant represents that suspect asbestos-containing materials affected by the project site development would be identified prior to construction and properly managed during construction activities. The NYC SCA determined that no other significant effects on the environment which would require an Environmental Impact Statement are foreseeable.

By letter dated March 30, 2022, the Staten Island Office of the New York City Department of City Planning ("DCP") communicated approval of applications by the Chair of the City Planning Commission to DOB for an authorization pursuant to Z.R. § 107-64 for tree removal, and certification pursuant to Z.R. § 107-323 for the substitution of plant material.

By letter dated April 5, 2022, the New York City Department of Environmental ("DEP") states that the proposed sanitary and storm will be discharged as per the certified Site Connection Proposal ("SCP") #19049. The proposed water connection will be on the existing 8" dia. City water mains in Deisius Street, Stecher Street, or Kingdom Avenue. It is anticipated that the proposed water connection, 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 NYC DEP has no objections to the proposed GCL § 36 applications.

By memorandum dated April 7, 2022, the Office of the Deputy Mayor for Economic and Workforce Development states that it approves the request for the non-compliance with Z.R. §§ 24-34, 24-521, and 25-30.

Additionally on December 16, 2021 and March 24, 2022 two Technical Memorandums were issued. The first Technical Memorandum incorporates a newly proposed six-foot wide sidewalk to be located along the north side of Eylandt Street between Kingdom Avenue and Stecher Street. The second Technical Memorandum identifies that the proposed project build year has shifted from 2024 to 2025. It was established that these two adjustments to SCA's proposed P.S. 5R Addition would not have any impact on the previous conclusions of the October 21, 2021 EAF and Negative Declaration.

By correspondence dated March 24, 2022, the New York City Department of Transportation ("DOT") states that it has reviewed the applicant's Technical Memo dated March 24, 2022 and has no objection to the proposed development.

By letter dated March 28, 2022, the Mayor's Office of Environmental Coordination concurs that there would be no significant adverse environmental impacts due to the construction of the proposed project with the zoning non-compliances identified in the March 25, 2022 zoning override.

Accordingly, the Board has determined that this

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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 *adopt* the findings of EAF dated October 21, 2021 prepared by SCA in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and does hereby *modify* the decision of the Department of Buildings, dated September 23, 2021, acting on New Building Application No. 500876885, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the development 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 April 11, 2022"- One (1) sheet; and *on further condition*:

THAT the proposed development shall comply with Fire Code, unless FDNY grants a waiver;

THAT SCA must work with the Department of Parks and Department of Transportation, School Safety to reach an agreement on how the sidewalks and street trees are to be structured;

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. 2021-68-A"), shall be obtained within four years, by April 25, 2026;

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, April 25, 2022.

2021-73-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Chelsea 24th Street LLC, owner.

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-6 zoning district.

PREMISES AFFECTED – 113 West 24th Street, Block 800, Lot 50, 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 –

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 ("DOB"), acting on New Building Application No.121204598, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on March 29, 2022, after due notice by publication in *The City Record*, and then to decision on April 25, 2022. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood. Community Board 4, Manhattan, waived its recommendation of this application.

The Premises are located on the northeast side of West 24th street, between 7th Avenue and Avenue of the Americas, within an M1-6 zoning district, in Manhattan. With approximately 75 feet of frontage along West 24th Street, 94 feet of depth, and 7,112 square feet of lot area, the Premises are occupied by an unfinished 43-story transient hotel.

I.

On June 12, 2018, DOB issued Permit No. 121204598-01-FO-EA for excavation work; on June 12, 2018, DOB issued Permit No. 121204598-01-FO for foundation work, including support of excavation work; and on November 26, 2018, DOB issued Permit No. 121204598-01-NB for construction of the entire development, and determined that the building would comply with all applicable zoning regulations. The applicant represents that Permit No. 121204598-01-FO-EA was renewed on August 7, 2018 and November 27, 2018; Permit No. 121204598-01-FO was renewed on August 7, 2018, November 27, 2018, and February 5, 2019; and Permit No. 121204598-01-NB was most recently renewed on August, 2, 2021.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission ("CPC") approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement of extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803.

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Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. § 11332(a) to complete construction and obtain a certificate of occupancy for the subject project was October 19, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on October 19, 2021, the applicant now seeks an extension of time to complete construction.

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 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).

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 states that as of September 20, 2021 construction had been proceeding for 1,173 days, out of the total 1,250 days scheduled for the project, constituting approximately 94% of the work based on the current project schedule. Additionally, the applicant submitted supporting evidence demonstrating that (i) excavation and foundations, (ii) concrete superstructure and other structural work, (iii) façade, (iv) vertical transportation, and (v) plumbing, sprinkler, electrical, and fire alarm work had been completed. The applicant states that the balance of work remaining as of September 30, 2021, consisted of limited work on the storefront, installation of exterior pavers and canopy glass, installation of the gas meter, completion of kitchen exhaust ductwork and equipment connections, completion of bar and lobby finishes, and installation of limited furniture, fixtures, and equipment (“FF&E”) on the first and second floors.

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 \$73,055,573.87, expended on completion of (i) excavation and foundations, (ii) concrete superstructure and other structural work, (iii) façade, (iv) vertical transportation, and (v) plumbing, sprinkler, electrical, and fire alarm work, representing 96% of the expected final budget of \$76,244,623.96. 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.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, under Z.R.

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§ 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. 121204598-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring October 19, 2023.

Adopted by the Board of Standards and Appeals, April 25, 2022.

CORRECTION: This resolution adopted on April 25, 2022, under Calendar No. 2021-86-BZY, is hereby corrected to read as follows:

2021-86-BZY

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 218 Holding Inc., owner.

SUBJECT – Application November 20, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district.

PREMISES AFFECTED – 88 Walker Street, Block 196, Lot 24, 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 Scibetta5

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 (“DOB”), acting on New Building Application No. 122058030, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on April 12, 2022, after due notice by publication in *The City Record*, and then to decision on April 25, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 1, Manhattan, waived its recommendation of this application.

The Premises are located on the north side of Walker Street, between Cortlandt Alley and La Fayette Street, within an M1-6 zoning district, in Manhattan. With approximately 49 feet of frontage along Walker Street, 88 feet of depth, and 4,207 square feet of lot area, the Premises are occupied by an unfinished ten-story, plus cellar, building which contains Use Group (“UG”) 6 commercial, UG 5 transient hotel, and UG 4 ambulatory diagnostic and treatment health facility.

I.

On March 30, 2017, DOB issued Permit No. 122058030-01-NB for the construction of a ten-story building at the subject Premises to contain commercial (UG

6), transient hotel (UG 5), an ambulatory diagnostic and treatment health facility uses (UG 4) and determined that the building would comply with all applicable zoning regulations. The applicant represents that the cellar at the subject Premises would contain retail and/or eating and drinking establishment uses (UG 6) the first floor would primarily contain retail and/or eating and drinking establishment uses. Most recently, the New Building Permit was renewed by DOB on September 23, 2021, with an expiration date of June 26, 2022.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement of extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803. Z.R. § 42-111 provides that if a building permit for the development of a transient hotel in an M1 zoning district was lawfully issued by the DOB, such construction may continue through December 20, 2021. If such construction has not been completed and the certificate of occupancy has not been issued by December 20, 2021, then the permit would lapse.

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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction.

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 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

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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).

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 submitted photographs demonstrating that the exterior of the ten-story subject building has been constructed and that interior walls, floors and stairs are complete. The applicant represents that the remaining work is limited to interior finishes and painting, stating that approximately 85-90% of building work is complete.

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 \$8,809,669.11, expended on contractor, subcontractor, and material payments, representing 86% of the expected final budget of 10,233,783.00. 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.

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. 122058030, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring December 20, 2023.

Adopted by the Board of Standards and Appeals, April 25, 2022.

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens. Block 15510, Lot 0011

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for deferred decision.

2020-82-A & 2020-83-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ranchers Best Wholesale Meats, Inc., owner.

SUBJECT – Application October 14, 2020 – Proposed development of a two (1) family dwellings partially located within the bed of a mapped street contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 51 & 53 Cortlandt Street, Block 1039, Lot (s) 39, 37, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M. for continued hearing.

2021-10-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Victory Boulevard Medical Holdings LLC, owner.

SUBJECT – Application January 19, 2021 – Proposed construction of a one-story commercial building (UG6) not fronting on a mapped street contrary to General City Law §36. M1-1 zoning district.

PREMISES AFFECTED – 3869 Victory Boulevard, Block 2784, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M. for deferred decision.

2021-20-A & 2021-21-A

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

SUBJECT – Application March 16, 2021 – Proposed development of a three-story residential building within the bed of a mapped street contrary to General City Law §35. R3-1 Lower Density Growth Management Area.

PREMISES AFFECTED – 106 & 108 Winham Avenue, Block 4049, Lot (s) 49, 48, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M. for continued hearing.

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2021-75-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for LGR 9th Street LLC, owner.

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a major development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-15 9th Street, Block 475, Lot 26, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for decision, hearing closed.

2022-5-BZY

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

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-04 11th Street, Block 474, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 9-10, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2021-44-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for DK Bedford Realty LLC, owner.

SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space), ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3204 Bedford Avenue, Block 7606, Lot 77, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 16, 2021, acting on DOB Alteration Type I Application No. 322035515, reads in pertinent part:

- 1- Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted .50
- 2- Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150%
- 3- Plans are contrary to ZR 23-461(a) in that the proposed minimum side yard is less than the required 5'-0"
- 4- Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0".

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, with cellar and attic, single-family, detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”) (Z.R. § 23-141), side yards (Z.R. § 23-461(a)), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on February 8, 2022, after due notice by publication in *The City Record*, with a continued hearing on March 14, 2022, and then to decision on April 25, 2022. Community Board 14, Brooklyn, recommends approval of this application.

The Premises are located on the west side of Bedford Avenue, between Avenue J and Avenue K, within an R2 zoning district, in Brooklyn. With approximately 38 feet of frontage along East 26th Street, 100 feet of depth, and 3,750 square feet of lot area, the Premises are occupied by an existing two-story, with cellar and 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 single-family, detached residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, with cellar and attic, single-family detached residence with approximately 2,595 square feet of floor area (0.69 FAR), 99.7% OSR, two side yards with widths of 10'-8" and 4'-8", a front yard with a depth of 11'-6" at the first floor and 18'-4" at the second floor, a rear yard with a depth of 36'-0", an existing wall height of 20'-1", and a building height of 36'-8". The applicant seeks to enlarge the existing residence by replacing the attic with a full third floor, as well as expanding the cellar, first, and second floors. The applicant contends that the cellar level would remain open, with storage, mechanical, and a bathroom; the first-floor enlargement would include an expanded dining room and dinette space, as well as the inclusion of a center stair hallway; the second floor would be enlarged to include a

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master suite with a bathroom, as well as three bedrooms, a bathroom, and a laundry; and third floor would have two bedrooms and bathroom. The applicant states that the proposed home would rise to 34'-4", with a perimeter wall height of 22'-2" and would maintain the existing front yards at both the first and second floors. The applicant further maintains that the proposed home would have two side yards, and one would maintain the existing 4'-8" width while the other would be reduced to 7'-6".

Z.R. § 23-48 allows for the total width of side yards to be reduced by four inches for every foot by which the width of the lot is less than what is required by Z.R. § 23-32. The applicant argues that because the existing lot is 37'-6" in width, and, as such, the total width of side yards may be reduced by 10'-0", to 12'-2" (40'-0" - 37'-6" = 2'-6" x 4'-0" = 10'-0") and that the proposed side yards of 4'-8" and 7'-6" total 12'-2" would comply with Z.R. § 23-48.

At the Premises, pursuant to Z.R. §§ 23-141, 23-461(a), and 23-47, a maximum of 0.50 FAR is permitted, a minimum of 150% OSR is required, two side yards, with minimum widths of 5 feet and 13 feet of total side yard, are required, and a rear yard with a minimum depth of 30 feet is required. 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 48 residences (51%) have an FAR of 0.50 or greater, ranging from 0.51 to 1.04, and 18 residences (19%) have an FAR of .9 or greater. With respect to OSR, the applicant submitted a lot coverage study demonstrating that 71 residences (76%) have lot coverages that are greater than or equal to 35%, ranging from 36% to 65%. The applicant submitted a rear yard study of the subject block demonstrating that 27 residences (81%) have rear yards with less than 30 feet of depth, ranging from 29 feet to 15 feet. Furthermore, the applicant submitted a photographic streetscape of the subject block demonstrating that the proposed enlarged residence is consistent with the built character of the immediate area. Additionally, the applicant submitted Sanborn Maps from 1930, 1950, 1969, and 2007 demonstrating that the side yards at the subject site, measuring 4'-8" and 8'-1" have been in existence since at least 1930, and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances.

Based upon its review of the record, 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 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 cellar and attic, single-family, detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, 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 substantially conform to drawings filed with this application marked "Board Approved April 25, 2022" — Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.99 FAR (3,729.26 square feet of floor area), a minimum of 54.95% OSR, two side yards with minimum widths of 4'-8" and 7'-6", a front yard measuring 11'-6" at the first floor and 18'-4" at the second floor and above, and a rear yard with a minimum depth of 20' at the first floor and 25'-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 exterior insulation finishing system ("EIFS") 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. 2021-44-BZ"), shall be obtained within four years, by April 25, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, April 25, 2022.

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block

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00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

2019-304-BZ & 2019-305-A

APPLICANT – Sheldon Lobel, P.C., for 82 Willis, LLC, owner

SUBJECT – Application December 19, 2019 – Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §§23-662(a) and 123-662 (b) (height). Waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district.

PREMISES AFFECTED – 180 East 132nd Street, Block 2260, Lot 180, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

2020-36-BZ

APPLICANT – Eric Palatnik, P.C. for Bolla City Holdings, LLC., owner.

SUBJECT – Application April 27, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 8401 Flatlands Avenue, Block 8005, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for adjourned hearing.

2021-56-BZ

APPLICANT – Sheldon Lobel, P.C., for 341-353 39th Street LLC, owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Prospect Charter School) contrary to ZR §42-00. M1-2 zoning district.

PREMISES AFFECTED – 341 39th Street, Block 704, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10: A.M., for continued hearing.

PUBLIC HEARINGS
MONDAY-TUESDAY, APRIL 25-26, 2022
2:00 P.M.

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

ZONING CALENDAR

2021-43-BZ

APPLICANT – Greenberg Traurig, LLP, for Harmony Rockaway LLC, owner.

SUBJECT – Application June 29, 2021 – Variance (§72-21) to permit the repurposing of an existing three-story plus cellar building to be occupied with commercial offices (UG 6B) and as of right community facility uses contrary to ZR §32-00. R4-1 zoning district.

PREMISES AFFECTED – 90-91 Beach Channel Drive, Block 16124, Lot (s) 33, 76, 78, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10: A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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May 20, 2022

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HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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2022-26-BZ

1418 Shore Boulevard, Block 8755, Lot(s) 0017, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk regulations. R3-1 zoning district. R3-1 district.

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

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**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, JUNE 6-7, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, June 6th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday, June 7th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

268-03-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Park Circle Realty Associates, owner.
SUBJECT – Application October 13, 2021 – Extension of Term (§11-411) for the continued operation of an automotive service station which will expire on January 27, 2024; Waiver of the Rules. C1-3/R3-2 zoning district.
PREMISES AFFECTED – 145-55 Guy Brewer Boulevard, Block 13313, Lot 40, Borough of Queens.
COMMUNITY BOARD #13Q

APPEALS CALENDAR

2020-91-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Maple Towers LLC, owner.
SUBJECT – Application December 16, 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 cellar and four-story, eight-family residential building prior to the adoption of a zoning text amendment on September 14, 1989 when the zoning was R6. R5 zoning district.
PREMISES AFFECTED – 109-52 54th Avenue, Block 2010, Lot 24, Borough of Queens.
COMMUNITY BOARD #4Q

2021-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Block 7206 Industrial LLC, owner.
SUBJECT – Application March 16, 2021– Proposed development of a two-story office and warehouse building (UG 6 & UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.
PREMISES AFFECTED – 500 Industrial Loop, Block 7206, Lot 86, Staten Island.
COMMUNITY BOARD #3SI

2021-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.
SUBJECT – Application April 9, 2021– Proposed development of a one-story warehouse building (UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.
PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.
COMMUNITY BOARD #3SI

2021-78-A

APPLICANT – Sheldon Lobel, P.C., for Ratan Realty Two, LLC, owner.
SUBJECT – Application November 22, 2021 – Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-2D zoning district.
PREMISES AFFECTED – 131 22nd Street, Block 642, Lot 13, Borough of Brooklyn.
COMMUNITY BOARD #7BK

2021-80-BZY

APPLICANT – Sheldon Lobel, P.C., for Ratan Realty Two, LLC, owner.
SUBJECT – Application November 22, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2D zoning district.
PREMISES AFFECTED – 131 22nd Street, Block 642, Lot 13, Borough of Brooklyn.
COMMUNITY BOARD #7BK

2022-24-A

APPLICANT – Dominick Deangelis, RA, for Nina Kubota, President, owner.
SUBJECT – Application April 8, 2022 – Proposed development of a new 3-story NYC School Construction Authority (SCA) K-5 school building, P.S. 121, located on a site not fronting on a mapped street contrary to General City Law §36. R3A zoning district.
PREMISES AFFECTED – 4074 Victory Boulevard aka Shelley Avenue, Block 2629, Lot(s) 1, 20, Borough of Staten Island.
COMMUNITY BOARD #2SI

CALENDAR

ZONING CALENDAR

233-15-BZ

APPLICANT – Fried, Frank, Harris, Shriver, and Jacobson by Melanie Meyers, Esq., for CSC 4540 Property Co. LLC, owner.

SUBJECT – Application October 2, 2015 – Variance (§ 72-21) to permit a mixed-use residential building with retail on the ground floor, contrary to use regulations (ZR § 42-10), maximum building height (ZR § 62-341(c)(2)), tower floor plate in excess of 7,000 sq. ft. (ZR 62-341(c)(4)), and setback above base height from a shore public walkway (ZR § 62-341(a)(2)). M1-4 ZD and waterfront area.

PREMISES AFFECTED – 45-40 Vernon Boulevard, Block 26, Lot(s) 4 & 8, Borough of Queens.

COMMUNITY BOARD #2Q

2020-50-BZ

APPLICANT – Law Office of Lyra J. Altman, for Haim Haddad, owner.

SUBJECT – Application June 8, 2020 – 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.

PREMISES AFFECTED – 2328 Olean Street, Block 7677, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2021-64-BZ

APPLICANT – Law Office of Lyra J. Altman, for Ouni Mamrout, owner.

SUBJECT – Application October 12, 2021 – Special Permit (§ 73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 zoning district.

PREMISES AFFECTED – 205-207 Gravesend Neck Road, Block 7154, Lot(s) 3 & 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2021-67-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniel Husney, owner.

SUBJECT – Application October 22, 2021 – Special Permit (§ 73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 2307 Ocean Parkway, Block 7183, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY, MAY 9-10, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

581-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Salamander Realty, owner.

SUBJECT – Application January 25, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance permitting the operation of a trade school, meeting hall and offices (Use Groups 6 & 9) which expired on December 21, 2021. R5 zoning district.

PREMISES AFFECTED – 24-01 to 24-11 36th Avenue, Block 338, Lot 1, 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 Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy pursuant to a variance, that permitted the use of the Premises as a Use Group (“UG”) 9 and 6 trade school, meeting hall, and offices and expired on June 27, 2021.

A public hearing was held on this application on March 28, 2022, after due notice by publication in *The City Record*, and then to decision on May 9, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The Premises are located on the northeast corner of 36th Avenue and 24th Street, within an R5 zoning district, in Queens. With approximately 125 feet of frontage along 36th Avenue, 142 feet of frontage along 24th Street, and 17,265 square feet of lot area, the Premises are occupied by an existing one-story commercial building with open parking and loading area.

The Board has exercised jurisdiction over the Premises since January 22, 1957, when, under the subject calendar number, the Board granted a variance to permit the building partly constructed, as proposed and indicated on plans filed with the application for occupancy by the owner’s lessee of a storage and warehouse for stapling machines of the lessee, and to permit parking at the rear of the plot and unloading as proposed, on condition that in all other respects the building and occupancy comply with all laws, rules, and regulations applicable thereto; the building not be increased in height or

area beyond what is shown; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; and, all permits be obtained and all work completed within one year.

On June 27, 2017, under the subject calendar number, the Board amended the variance, pursuant to Z.R. § 11-413, to permit a change in use from storage warehouse and offices (UG 16 and 6) to a trade school, meeting hall, and offices (UG 9 and 6) on condition that the building not be increased in height or area beyond that shown on the Board-approved plans; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by June 27, 2021; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

By letter dated September 30, 2020, the Board approved minor modifications to the Board-approved drawings as in substantial compliance with the Board’s grant, including: adjusting room occupancy numbers based on net area recalibration; updating room names and numbers; adding proposed bollards dimensions on the plans; adding new ADA turn around areas; adding new exterior fixtures, doors, fencing and gates; adding a new women’s restroom; replacing the kitchen with a pantry; adding sprinkler notes on the drawings; and, showing the existing loading dock, office and restroom areas in the new building sections drawing.

The time to have obtained a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that, while construction of the Premises has completed, delays have occurred in obtaining a certificate of occupancy due to the COVID-19 global pandemic slowing down application review and backlogs for construction materials. Accordingly, the applicant seeks two years to obtain a certificate of occupancy.

Based upon its review of the record, the Board has determined that the requested extension of time 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, dated January 22, 1957, as amended through September 2, 2020, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for two years, to May 9, 2024, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Board Approved May 9, 2022” – Seven (7) sheets; and on *further condition*:

THAT containers shall be removed from the Premises

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at the completion of construction;

THAT the building shall not be increased in height or area beyond that shown on the Board-approved plans;

THAT portable fire-fighting appliances shall be maintained as the Fire Commissioner directs;

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. 581-56-BZ"), shall be obtained within two years, by May 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, May 9, 2022.

490-72-BZIII

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.

SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a retail or service establishment (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice of Procedures. R4 zoning district.

PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

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 obtain a certificate of occupancy pursuant to a variance, granted under Z.R. § 72-21, that permitted the use of the Premises as a Use Group 6A convenience retail or service establishment or 6C retail or service establishment store and expired on February 5, 2020.

A public hearing was held on this application on December 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 26, 2022, and then to decision on May 9, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area.

The Premises are located on the northeast corner of

Baychester Avenue and Bussing Avenue, partially within an R4 zoning district and partially within an R4 (C1-2) zoning district, in the Bronx. With approximately 120 feet of frontage along Baychester Avenue, 66 feet of frontage along Bussing Avenue, and 7,427 square feet of lot area, the Premises are occupied by an existing one-story building (approximately 3,385 square feet of floor area).

The Board has exercised jurisdiction over the Premises since March 13, 1973, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the construction of a one-story building for use as a bank, contrary to applicable use regulations, for a term of 15 years, expiring March 13, 1988, on condition that all work substantially conform to the approved drawings; accessory parking be provided along the exterior perimeter of the driveway; all laws, rules and regulations be complied with; and substantial construction be completed within one year, by March 13, 1974.

On April 22, 1975, under the subject calendar number, the Board amended the resolution on condition that the Premises substantially conform to drawings of conditions as built submitted with the application on condition that other than as amended the resolution issued on March 13, 1973, be complied with in all respects.

On April 4, 1989, under the subject calendar number, the Board granted a ten-year extension of the term of the variance, expiring March 13, 1998, on condition that the ground cover along Bussing Avenue be restored and maintained and replaced when necessary; the landscaping be maintained and replaced when necessary; one street tree be installed in accordance with approved plans and maintained and replaced when necessary; the fence be repaired and maintained in good condition at all times; all signs conform with the C1 district regulations; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 4, 1990.

On May 25, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedures and extended the term of the variance for an additional ten years, expiring March 13, 2008, on condition that all signs be maintained in accordance with BSA-approved plan; the Premises be maintained in substantial compliance with proposed drawings submitted with the application; 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 25, 2000.

On February 5, 2019, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to permit an increase in the number of parking spaces provided at the Premises, a change in use from a Use Group 6C bank to a Use Group 6A convenience retail or service establishment or Use Group 6C retail or service establishment. extend the term of the variance for ten years, expiring February 5, 2029, on condition that all work substantially conform to plans filed with the application; the use of the building be limited to Use Group 6A convenience retail or service

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establishment or Use Group 6C retail or service establishment; a maximum of seven accessory off-street parking spaces be maintained at the site in a locked condition and exclusively for employee parking; the gates that access the rear and side yards of the Premises be controlled by employees at all times; occupancy of the Premises by a drive-through convenience store shall not be permitted; signage be located on the exterior of the gate indicating that parking is restricted employee use only; lighting on the Premises not spread over the property line and reach zero lumens at each property line; all conditions not specifically waived by the Board remain in effect; the conditions appear on a revised certificate of occupancy; a revised certificate of occupancy, indicating the approval and calendar number (“BSA Cal. No. 490-72-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.

The time to have obtained a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than 30 days since the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application.

The applicant represents that the subject retail convenience store employs approximately four to five employees and the proposed hours of operation are 24 hours per day, 7 days per week. Deliveries are anticipated 5 times per week between 9:00 a.m. to 4:00 p.m. with an average of one to two deliveries per day. The trash collection times are on Monday through Saturday between 7:00 p.m. and 1:00 a.m.; there will be no trash collection on Sunday. Trash will be stored inside the building in an enclosed area and removed only during pick up times by the carting company. The fencing along the entire perimeter of the parking area on the property maintains security for the site and screening for the adjacent residents. The applicant adds that landscaping will be installed within 90 days and maintained by the property owner. The applicant seeks a one-year extension of time to obtain a certificate of occupancy.

Over the course of hearings, the Board raised concern that visits to the Premises revealed maintenance issues on the Premises. Specifically, the Board noted that the Premises had landscaping that was poorly maintained, the presence of graffiti, and illegal storage of cars in the yards. In response, the applicant represented that the Premises was restored to a condition in compliance with Board conditions and submitted photographs to substantiate the condition of the Premises.

Based upon its review of the record, the Board has determined that the requested extension of time 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, dated March 13, 1973, as amended through February 5, 2019, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for one year, to May 9, 2023, *on condition*:

THAT the term of the variance shall expire on February 5, 2029;

THAT use of the building shall be limited to Use Group 6A convenience retail or service establishment or Use Group 6C retail or service establishment;

THAT a maximum of seven accessory off-street parking spaces shall be maintained at the site in a locked condition and exclusively for employee parking;

THAT the gates that access the rear and side yards of the site shall be controlled by employees at all times;

THAT occupancy of the site by a drive-through convenience store shall not be permitted;

THAT signage shall be located on the exterior of the gate indicating that parking is restricted employee use only;

THAT lighting on the site shall not spread over the property line and reach zero lumens at each property line; and

THAT 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. 490-72-BZ”), shall be obtained within one year, by May 9, 2023;

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

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

THAT the Department of Buildings must 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 9, 2022.

128-15-BZII thru 130-15-BZII

APPLICANT – Terminus Group, LLC, for John Massamillo, owner

SUBJECT – Application January 24, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a three-family attached residential building which expires on April 10, 2022. R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682, 684 Van Duzer Street, Block 615, Lot(s) 95, 96, 97, Borough of Staten Island.

COMMUNITY BOARD #1SI

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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction pursuant to a variance, granted under Z.R. § 72-21, that permitted the development of three attached residences and expired on April 10, 2022.

A public hearing was held on this application on April 11, 2022, after due notice by publication in *The City Record*, and then to decision on May 9, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The Premises are located on the west side of Van Duzer Street, at the intersection with Broad Street, within an R2 zoning district and the Special Hillside Preservation District, on Staten Island. With approximately 50 feet of frontage along Van Duzer Street, 300 feet of depth, and 14,755 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since April 10, 2018, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the development of three attached residences that do not comply with zoning regulations for use, contrary to Z.R. § 22-00, with one that does not comply with zoning regulations for front yards, contrary to Z.R. § 23-45, on condition that all work, operations and site conditions conform to drawings filed with the application; the bulk parameters of the building on Lot 97 be as follows: a front yard with a minimum depth of 0'-0" along Broad Street, as illustrated on the Board-approved plans; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by April 10, 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 time to have substantially constructed having expired, the applicant now seeks an extension.

The applicant represents that, while the Premises remains vacant, the applicant has been proceeding with approvals related to the instant project. Specifically, the applicant states that Department of Environmental Protection site drainage approvals were granted in January 2022. Department of City Planning (“DCP”) and Department of Transportation (“DOT”) applications are filed and under review, and approvals should be obtained within the next few months. At the Board’s request, the applicant submitted an estimated construction timeline which anticipates obtaining DCP and DOT approvals by December 2022, DOB approval in April 2023, a two-year construction period from June 2023 to June 2025, and a

certificate of occupancy by September 2025. Accordingly, the applicant requests a four-year extension of time to complete construction.

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 April 10, 2018, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for four years, to April 10, 2026, *on condition*:

THAT substantial construction shall be completed by April 10, 2026;

THAT the bulk parameters of the building on Lot 97 shall be as follows: a front yard with a minimum depth of 0'-0" along Broad Street, as illustrated 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. 128-15-BZ through 130-15-BZ”), shall be obtained within four years, by April 10, 2026;

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 9, 2022.

2017-67-BZII

APPLICANT – Safanya Matavov, owner.

SUBJECT – Application November 8, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy of a previously approved Special Permit (§73 - 622) permitting the enlargement of an existing single-family home which will expire on January 9, 2022. R3-2 zoning district.

PREMISES AFFECTED – 2714 Avenue R, Block 6833, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to

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complete construction and obtain a certificate of occupancy pursuant to a special permit, granted under Z.R. § 73-622, that permitted the enlargement of an existing residence and expired on January 9, 2022.

A public hearing was held on this application on April 26, 2022, after due notice by publication in *The City Record*, and then to decision on May 9, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The Premises are located on the south side of Avenue R, between East 27th Street and East 28th Street, within an R3-2 zoning district, in Brooklyn. With approximately 33 feet of frontage along Avenue R, 100 feet depth, and 3,300 square feet of lot area, the Premises are occupied by an existing two-story single-family detached residence to be enlarged.

The Board has exercised jurisdiction over the Premises since January 9, 2018, when, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-622, to permit the enlargement of an existing residence that does not comply with zoning regulations for floor area ratio, side yards, open space and perimeter wall height, contrary to Z.R. §§ 23-141, 23-461, and 23-631; on condition that all work and site conditions substantially conform to drawings filed with the application; the bulk parameters of the building be as follows: floor area be limited to a maximum of 2,251 square feet (0.68 FAR), side yards have minimum depths of 3'-10" and 8'-9", there be a minimum of 58.48 percent open space and height of the perimeter wall be no more than 22'-0", as illustrated on the Board-approved plans; all existing exterior walls and wall joists indicated to remain undisturbed on the Board-approved plans remain or the special permit is void; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by January 9, 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 time to have completed construction and obtain a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that construction delays have occurred due, in part, to a change in project architect, and difficulties in obtaining construction materials due to the global COVID-19 pandemic. The applicant anticipates construction completing construction in approximately 18 months and seeks a four year extension of time to complete construction and obtain a certificate of occupancy.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and 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, dated January 9, 2018, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, to May 9, 2026, *on condition*:"

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to a maximum of 2,251 square feet (0.68 FAR), side yards shall have minimum depths of 3'-10" and 8'-9", there be a minimum of 58.48 percent open space and height of the perimeter wall be no more than 22'-0", as illustrated on the Board-approved plans;

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the Board-approved plans shall remain or the special permit is void;

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. 2017-67-BZ"), shall be obtained within four years, by May 9, 2026;

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 9, 2022.

360-49-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilts Petroleum Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on May 2, 2006; Waiver of the Board's Rules. R4-1 zoning district.

PREMISES AFFECTED – 69-05 Eliot Avenue, Block 2838, Lot 38, Queens.

COMMUNITY BOARD #5Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for decision, hearing closed.

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887-54-BZIV

APPLICANT – Eric Palatnik, P.C, for Napa Realty Corp., owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued use of gasoline station (BP Amoco) with accessory convenience store which expires on June 15, 2020. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for decision, hearing closed.

808-55-BZ

APPLICANT – Eric Palatnik, P.C, for 35 Bell Realty Inc., owner.

SUBJECT – Application September 29, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on March 27, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, Block 6169, Lot 6, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for decision, hearing closed.

827-55-BZIII

APPLICANT – Eric Palatnik, P.C, for Spartan Petroleum Corp., owner.

SUBJECT – Application July 15, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which is set to expire on January 31, 2021. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, Block 1361, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for continued hearing.

548-69-BZIV

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

SUBJECT – Application July 29, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expires on May 25, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on June 6, 2018; Waiver of the Board’s Rules of Practice and Procedures. C2-3/R6B zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

435-74-BZ

APPLICANT – Eric Palatnik, P.C, for Theresa Townsley, owner.

SUBJECT – Application January 22, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expired on January 14, 2020. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

1254-80-BZ

APPLICANT – Jay Goldstein, Esq., for Sephardic Institute for Advanced Learning, owner.

SUBJECT – Application May 26, 2020 – Amendment of a previously approved Variance (§72-21) to permit the enlargement of a previously approved house of worship contrary to underlying bulk requirements. R6A, Special Ocean Parkway District.

PREMISES AFFECTED – 511 Avenue R, Block 394, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 7-8, 2022, at 10 A.M., for continued hearing.

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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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for decision, hearing closed.

299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

6-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

215-06-BZIV

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; BP Products North America Inc. lessee.

SUBJECT – Application September 30, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on July 21, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board’s Rules. R5B zoning district.

PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for decision, hearing closed.

227-10-BZ

APPLICANT – Eric Palatnik, P.C, for Power Test Realty Corporation, owner.

SUBJECT – Application June 12, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) to expire on September 20, 2021. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for decision, hearing closed.

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337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe La Sorsa, owner.

SUBJECT – Application October 4, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2022. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415/17 East 92nd Street, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for postponed hearing.

180-98-BZ

APPLICANT – Law Office of Jay Goldstein, for Swaraj Property, LLC, owner.

SUBJECT – Application September 22, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of (UG 6) retail which expired on December 8, 2018; Amendment to reflect minor changes; Waiver of the Board’s Rules of Practice and Procedures. R2 zoning district.

PREMISES AFFECTED – 163-10 Pidgeon Meadow Road aka 163 Place, 47-10 164th Street, Block 5494, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

148-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 11 Avenue A Realty LLC, owner.

SUBJECT – Application November 12, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit multi-family residential use which expired on December 15, 2019; Waiver of the Board’s Rules of Practice and Procedures. R8A/C2-5 zoning districts.

PREMISES AFFECTED – 11 Avenue A, Block 429, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 23-24, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2020-90-A

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application June 2, 2021 – 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 72-01-(g). Lower Density Growth Management Area.

PREMISES AFFECTED – 244 Gansevoort Boulevard, Block 761, Lot 45, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings, dated November 16, 2020, acting on New Building Application No. 540189794 reads in pertinent part:

Objection #1: Proposed construction located wholly within the bed of a mapped street is contrary to Section 35 of the General City Law. Obtain Board of Standards and Appeals approval
Objection #2: Proposed new building has bulk non-compliances resulting from the location of such mapped street. Obtain Board of Standards and Appeals waiver pursuant to Zoning Resolution 72-01(g).

This is an application under General City Law (“GCL”) § 35 to permit, in an R3X zoning district and Lower Density Growth Management Area, the construction of a two-story, plus attic and cellar, two-family, detached residence within the bed of a mapped street and a waiver of Z.R. § 72-01(g). This application is filed in conjunction with BSA Cal. No. 2021-36-BZ, which is an application to permit the proposed construction contrary to zoning regulations for side yards, as per Z.R. § 23-461(a).

A public hearing was held on this application on November 16, 2021, after due notice by publication in *The City Record*, with continued hearings on February 8, 2022 and March 15, 2022, and then to decision on May 9, 2022. Community Board 2, Staten Island, recommends denial of this application stating: “CB2 has always been on record as being opposed to building in the bed of a mapped street. This project is practically in the middle of the street.”

The Board also received 11 letters of objection to this application citing concerns regarding safety to pedestrians at the location for the proposed residence, traffic, particularly due to the narrowness of the street, loss of light and air, congestion, current lack of available parking, and loss of the current vegetation at the site.

The Premises are a corner lot bounded by Gansevoort

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Boulevard to the east, Westwood Avenue to the south, and Clermont Place to the west, within an R3X zoning district, in Staten Island. With approximately 40 feet of frontage along Gansevoort Boulevard, 121 feet of frontage along Westwood Avenue, 39 feet of frontage along Clermont Place, and 4,467 square feet of lot area, the Premises are currently vacant.

II.

GCL §35, in relevant part, provides that the Board may approve permits for development within the bed of mapped streets, as follows:

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the City has not acquired title thereto, the City may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the City.

Furthermore, Z.R. § 72-01(g) provides that the Board shall be able to do the following:

[W]aive bulk regulations affected by unimproved streets where a development, enlargement, alteration consists in part of construction within such streets and where such development, enlargement or alteration would be non-complying absent such waiver, provided the permit pursuant to Section 35 of the General City Law and has prescribed conditions which require the portion of the development or enlargement to be located within the unimproved street compliant and conforming to the provisions of this Resolution. Such bulk waivers shall only be as necessary to address noncompliance resulting from the location of the development or enlargement within and outside the unimproved streets, and the zoning lot shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved streets were not mapped.

III.

The applicant proposes to construct a new two-story, plus cellar and attic, two-family, detached residence with approximately 1,996 square feet of floor area (0.44 FAR). The applicant represents that the proposed development would be fully sprinklered with a total height of approximately 34'-9", front yards measuring 13'-6", 20'-0", and 54'-2"; and one side yard measuring 2'-0". The applicant further states that the proposed residence would provide three on-site parking spaces within a garage with a curb cut off Gansevoort Boulevard. Moreover, the applicant states that curbs and sidewalks would be added to the three street frontages of the site to prevent pedestrians from walking in the street. The applicant plans to retain the existing "No Standing" regulations on Westwood Avenue in

front of the site. An application has been filed with the Board, under BSA Cal. No. 2021-36-BZ, seeking to waive the requirement under Z.R. § 23-461(a) that the side yard measure 20 feet in width.

Furthermore, the applicant posits that the yards would be planted with grass as well as seven of the eight required NYC Department of Parks ("DPR") street trees. The applicant proposes to construct a five-foot sidewalk along all the street frontages for pedestrian access, and five feet of the area fronting along Westwood Avenue would be designated as part of a 35 feet NYC Department of Environmental Protection ("DEP") sewer corridor, in the event sewers need to be constructed or accessed.

Additionally, the applicant represents that the proposed project fronts on three public streets which are final mapped and have Corporate Counsel Opinions ("CCO"). Furthermore, the applicant declares that the Fire Department turning radius and road requirements as per FC 503.2 are not applicable as the streets at issue are not private fire apparatus access roads, and the proposed residence would provide sprinklers as per FC 503.3.2 because the public streets fronting the site are less than 34 feet wide.

As per the requirements under GCL § 35, the applicant represents that the City of New York has never taken any action toward acquisition of the privately owned portion of Westwood Avenue at this location, which was mapped on the site in 1935. The applicant further states that the widening of Westwood Avenue is not on the NYC Department of Transportation ("DOT") 10-year capital improvement plan, and there does not appear to be any reasonable possibility that any agency of the City of New York would have interest in the acquisition and development of the widening area.

As per Z.R. § 72-01(g), the applicant represents that the requested bulk waiver is needed for the front yard along Westwood Avenue, which is required to be a minimum of 20 feet, as per Z.R. § 23-461(a). Specifically, the applicant requests that because front yard setbacks are measured from street lines and, here, the entire site is within the street, the Board move the street line to coincide with the lot line along Westwood Avenue. Moreover, the applicant states the proposed front yard depth of 13'-6" along Westwood Avenue is compliant with Z.R. § 23-45.

IV.

By letter dated March 8, 2021, the Fire Department states that the Fire Department, Bureau of Operations City Planning Unit has concluded that an application need not be filed with their office for review and approval. Therefore, based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will inspect these Premises and enforce all applicable rules and regulations.

By letter dated March 30, 2021, DEP states that based on DEP maps, there is 8" dia. water main and an 8" dia. sanitary sewer in Westwood Avenue, an 8" dia. water main and an 8" dia. sanitary sewer in Gansevoort Boulevard and an 8" dia. water main in Clermont Place at the above referenced location.

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The latest Drainage Plan PRD-1B & 2B, Sheet 3 of 14, dated May 1971, shows future 10" dia. sanitary sewer and 21" dia. storm sewer in Westwood Avenue between Clermont Place and Gansevoort Boulevard, 10" dia. sanitary sewer and 12" dia. storm sewer in Gansevoort Boulevard at the intersection with Westwood Avenue and 10" dia. sanitary sewer and 21" dia. storm sewer in Clermont Place at the intersection with Westwood Avenue.

The application submitted the Topographical Survey, dated February 23, 2021, which shows the 60 feet width of the mapped Gansevoort Boulevard, from which 50 feet will be available for installation, maintenance, and/or reconstructions of the future and existing sewers and water main in Gansevoort Boulevard. Survey also shows the 50 feet width of the mapped Clermont Place, from which 34.8' will be available for the installation, maintenance, and/or reconstruction of the future sewer and existing water main in Clermont Place at the intersection with Westwood Avenue. In addition, the application has submitted a Site Plan A-101.00 2 of 2, dated March 17, 2021, which shows the 80 feet width of the mapped Westwood Avenue, from which 30 feet is an open width of the street plus the 5 foot wide sewer corridor inside of the lot # 45, along the southerly lot line of lot # 45, a total of 35 feet, will be available for the installation, maintenance, and/or reconstruction of the future and existing sewers and water main in Westwood Avenue, between Gansevoort Boulevard and Clermont Place. Based on the above, the NYC DEP has no objections to the proposed GCL 35 application.

By correspondence dated February 2, 2022, DOT states that it has reviewed the applicant's documents received on June 22, 2021. According to the Staten Island Brough President's Topographical Bureau, Westwood Avenue between Gansevoort Boulevard and Clermont Place is mapped at a width of 80 feet and has a CCO for 33 feet to 60 feet, as-in-use, dated October 24, 1988. The City does not have title.

Due to the fact that Lot 45 is nearly entirely within the mapped right-of-way of Westwood Avenue, DOT strongly recommends the applicant submit an application for City Map Change with the Department of City Planning ("DCP") for a partial demapping of this portion of Westwood Avenue. This would negate the need for a Board of Standards and Appeals approval and remove this portion of Westwood from the City Map. DOT usually provides comments once DCP forwards the application package to DOT for review. However, in reviewing this application, please note the following comments:

- 1) Please dimension the remaining paved width of Westwood Avenue at its narrowest point on the site plan. DOT requires that a minimum paved width of at least 24 feet for two-way traffic.
- 2) The existing "No Standing Anytime" regulations on either side of Westwood Avenue between Clermont Place and Gansevoort Boulevard must also be retained. Please reflect this on the site plan.

- 3) There is a utility pole shown on the site plan within the limits of the proposed curb cut with the note "relocate existing utility pole". Please identify where this pole will be relocated to and provide the approval by the appropriate utility. Note that all sidewalk appurtenances (e.g., poles, trees, etc.) must be located no closer than seven feet from the outside edges of any curb cut.
- 4) A minimum sidewalk width of five-foot sidewalk will be required. Please update the site plan accordingly.
- 5) The existing "STOP" sign and STOP-bar on Gansevoort Avenue should be shifted south to accommodate the new sidewalk being added along the north side of Westwood Avenue. Please reflect this change on the site plan.
- 6) Please clarify if any fencing will be installed along the perimeter of the property. It is recommended that any fence be installed with materials or a layout that preserves clear sight-lines between drivers traveling along Westwood Avenue and drivers waiting to turn from Clermont Place and Gansevoort Boulevard. The corners at both intersections should remain clear of sight-distance obstructions. This is of particular importance at the Clermont Place/Westwood Avenue intersection since the STOP-bar Clermont Place is set back farther from Westwood Avenue, further limiting sight lines.
- 7) This application will be subject to additional review under the Builder's Pavement Plan ("BPP"), which must be submitted to the DOB and DOT's Pedestrian Ramp Program ("PRP") unit for review. Please note the BPP regulation will require the following:
 - a. BPP partial roadway restoration and ramp upgrades required by the American Disabilities Act ("ADA"). Therefore, please include ramp upgrades at the northwest and southwest corners of the project scope. For ramps to remain, inspection forms demonstrating compliance must be submitted to PRP for review.
 - b. Install a parallel ramp at the northeast corner of Clermont Place and Westwood Avenue to provide pedestrian connectivity.
 - c. High visibility crosswalk markings will be required across the north leg of the Clermont Place/Westwood Avenue intersection, along with the new ramps, to connect the existing sidewalk to the new sidewalk along the north side of Westwood Avenue.

By correspondence dated May 6, 2022, DOT stated that it will not issue an additional letter for this application

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review and reiterated that the initial comments will be checked during DOT's BPP review.

- 1) Please illustrate on the site plan the proposed distance between the curb cut and the utility pole, which the distance should be at minimum of seven feet.
- 2) Please show the splays on either side of the driveway curb cut on the site plan. One-foot splays are typically acceptable for residential curb cuts, this will be confirmed during the BBP review.
- 3) High visibility crosswalks and STOP messages, as per the DOT crosswalk detail, will be required across both Clermont Place and Gansevoort Boulevard intersections.
- 4) The STOP sign is shown to be very close to the proposed curb cut. All street signs must be at least seven feet from all curb cuts. The distance between all street signs and curb cuts must be shown on the site plan.
- 5) Please include corner radii in feet at both Clermont Place and Gansevoort Boulevard.
- 6) Please see the document regarding DOT's policy for the swept path and Vehicle Tracking templates as examples of these requirements. The swept path analysis at both intersections will be required, using Vehicle Tracking template as examples of these requirements. The swept path analysis at both intersections will be required, using Vehicle Tracking software for SU-30 and FDNY-Seagrave (45.83 feet long) vehicles. However, if Autotum is the preferred method for the swept path analysis, the consultant may request a comparable settings file.

At hearings, the Board raised concerns regarding the applicant's BPP, site plan, and survey which the Board stated needed to be dimensioned to show the rest of the proposed remaining street bed; the applicant's sight line drawings, and placement of the proposed "STOP" sign. In response, the applicant submitted revised plans including the location of the proposed "STOP" sign, a five-foot sidewalk on Westwood Avenue, an eight-foot front yard from the sidewalk to the residence, and a note stating, "No fencing to be provided on site". The plans demonstrate that these changes have changed the residence's footprint to 21'-3" by 48'-0", 998 square feet of lot coverage, and the front yard off Clermont Place to 54'-2".

Accordingly, 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 16, 2020, acting on New Building Application No. 54018974, under the powers vested in the Board by Section 35 of the General City Law and Z.R. § 72-01(g), to *permit* the construction of

a building located within the bed of a mapped street and waive *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved May 9, 2022"- Two (2) sheets; and *on further condition*:

THAT the building is fully sprinklered;

THAT the distance between the curb cut and the utility pole must be a at a minimum of seven feet;

THAT there must be one-foot splays on either side of the driveway curb cut;

THAT high visibility crosswalks and STOP messages shall be required across both the Clermont Place and Gansevoort Boulevard intersections, as per the DOT standard crosswalk detail;

THAT the STOP sign must be at least seven feet from all curb cuts;

THAT the required swept path at both intersections must be submitted using Vehicle Tracking software for SU-30 and FDNY-Seagrave (45.83 feet long) vehicles or Autotum;

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. 2020-90-A"), shall be obtained within four years, by May 9, 2026;

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 9, 2022.

2021-36-BZ

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application June 2, 2021 – Variance (§72-21) to permit the development of a two-family detached home (UG 2) contrary to ZR §23-461(a) (side yard), R3X Zoning District.

PREMISES AFFECTED – 244 Gansevoort Boulevard, Block 761, Lot 45, 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 –

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The decision of the Department of Buildings, dated May 10, 2021, acting on New Building Application No. 540189794 reads, in pertinent part:

The Department of Buildings has no jurisdiction to modify the requirements of the Zoning Resolution. The request to waive ZR 23-461(a) which requires a corner lot to have at least one side yard of 20 feet is denied. The applicant may appeal to BSA.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3X zoning district and Lower Density Growth Management Area, the proposed construction of a two-story, plus cellar and attic, two-family, detached residence contrary to side yard regulations, as per Z.R. § 23-461(a). This application is filed in conjunction with BSA Cal. No. 2020-90-A, which is an application to permit the construction of the proposed residence within the bed of a mapped street contrary to General City Law § 35 and a waiver of Z.R. § 72-01(g).

A public hearing was held on this application on November 16, 2021, after due notice by publication in *The City Record*, with continued hearings on February 8, 2022 and March 15, 2022, and then to decision on May 9, 2022. Community Board 2, Staten Island, recommends denial of this application stating: “CB2 has always been on record as being opposed to building in the bed of a mapped street. This project is practically in the middle of the street.”

The Board also received 11 letters of objection to this application citing concerns regarding safety to pedestrians at the location for the proposed residence, traffic, particularly due to the narrowness of the street, loss of light and air, congestion, current lack of available parking, and loss of the current vegetation at the site.

I.

The Premises are a corner lot bounded by Gansevoort Boulevard to the east, Westwood Avenue to the south, and Clermont Place to the west, within an R3X zoning district, in Staten Island. With approximately 40 feet of frontage along Gansevoort Boulevard, 121 feet of frontage along Westwood Avenue, 39 feet of frontage along Clermont Place, and 4,467 square feet of lot area, the Premises are currently vacant.

II.

The applicant proposes to construct a new two-story, plus cellar and attic, two-family, detached residence with approximately 1,996 square feet of floor area (0.44 FAR). The applicant represents that the proposed development would be fully sprinklered with a total height of approximately 34'-9", front yards measuring 13'-6", 20'-0", and 54'-2"; and one side yard measuring 2'-0". The applicant further states that the proposed residence would provide three on-site parking spaces within a garage with a curb cut off Gansevoort Boulevard. Moreover, the applicant states that curbs and sidewalks would be added to the three street frontages of the site to prevent pedestrians from walking in the street. The applicant plans to retain the existing “No Standing” regulations on Westwood Avenue in front of the site. An application has been filed with the

Board, under BSA Cal. No. 2020-90-A, seeking waivers under General City Law § 35 and Z.R. § 72-01(g) to permit construction within the bed of a mapped street and to waive associated bulk requirements.

At the Premises, which are located within a Lower Density Growth Management Area, a corner zoning lot is required to have a minimum side yard of 20 feet, as per Z.R. § 23-461(a).

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the nature of the subject corner lot having only one side lot line and not owned by the City of New York/utilized as a street—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 submitted a Vacant Corner Lot Study which found that within 1,000 foot radius of the study area, 7 (11%) of the of 63 corner lots are vacant. Of those seven lots, six (86 %) are typical corner zoning lots with two front lot line and two side lot lines, and, as such, do not have the same constraints as the subject lot. The subject lot is the only corner lot within the Study Area that has only one side lot line.

Additionally, two (29%) of the seven vacant sites are owned by the City and are either fully or partially paved as part of Westwood Avenue or unpaved and within the bed of Westwood Avenue. One (14%) of the seven sites is privately owned but half is utilized as part of the Westwood Avenue roadbed and is also owned in conjunction with the adjoining lot. The two (29%) remaining sites are privately owned and have two side lot lines and, therefore, can comply with the 20 feet side yard requirement.

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.

B.

Next, as per Z.R. § 72-21(b), the applicant submits, and the Board concurs that, because the applicant is a two-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant argues that due to the uniqueness of this one side lot line corner zoning lot, compliance with both the side and front yard requirements would not be realistic. In support of this contention, the applicant points to the as-of-right site plan drawing, which indicates that the resulting width of the residence would be between 6'-6" and 7'-8" if the required side and front yards are provided and too narrow to be inhabited.

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C.

The applicant further 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 the area surrounding the subject Premises has a mix of residence types, and the proposed two-story, two-family, detached residence is permitted under the current zoning regulations, and therefore, would blend with the mix of existing single and two-family detached and semi-detached residences in the neighborhood. The applicant describes how the proposed residence would maintain a 54'-2" front yard along Clermont Place which would function as a useable area and meets the intent of the 20 feet side yard zoning regulation. The applicant states that a distance of 12'-10" would be maintained from the proposed residence to the adjacent residence.

In support, the applicant submitted a Corner Lot Study, which demonstrated that within the 1,000-foot radius of the Study Area, there are 63 corner lots of which 7 (11%) are vacant, and 56 (89%) are developed with residences. Additionally, the applicant submitted a Corner Lot Side Yard Study chart which shows the residences' side yards, widths, and the date the residence was constructed. The chart shows that the side yards range from 0 feet to 17 feet on the short portion of the residences and 5 feet to 56 feet on the long yard portion of the residences. The chart further states that none of the corner lot residences were built under the current R3X zoning district regulations which would allow for a two-foot side yard or has only one side lot line. The applicant posits that within the subject block, side yards range from 0 feet to 15 feet. 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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the corner lot having three front lot lines and one side lot line, in conjunction with the corner lot side yard requirement. The applicant submitted a 1957 Department of Finance Historic Alteration Book showing that the site has been in existence since January 11, 1957, and the regulation constraining the site came into effect in 2004. Additionally, the applicant submitted deeds which show that the lot was never owned with the adjacent lot. 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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that the requested bulk waiver would

permit the construction of a two-family, detached residence that would blend with the character of the residence in the surrounding area. The applicant reiterates that the requested waiver seeks to reduce the side yard from 20' to 2'; the area along Clermont Place will act as the rear yard and would measure 54'-2"; and all other bulk requirements would be in full compliance with the Zoning Resolution.

In support of this contention, the applicant submitted a Subject Block Home Size Study chart which shows the dimensions, footprint size, year built, and side yards of the residences on the subject block. The chart demonstrates that, on the subject block, the average footprint is 996 square feet, with an average frontage length of 26 feet and an average depth of 40 feet. The applicant states that the proposed residence has a footprint of 998.08 square feet, the length of the building along Gansevoort Boulevard is 21'-2", and the depth of the home is 48 feet. 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.

By letter dated March 8, 2021, the Fire Department states that the Fire Department, Bureau of Operations City Planning Unit has concluded that an application need not be filed with their office for review and approval. Therefore, based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will inspect these Premises and enforce all applicable rules and regulations.

By letter dated March 30, 2021, the New York City Department of Environmental ("DEP") states that based on DEP maps, there is 8" dia. water main and an 8" dia. sanitary sewer in Westwood Avenue, an 8" dia. water main and an 8" dia. sanitary sewer in Gansevoort Boulevard and an 8" dia. water main in Clermont Place at the above referenced location.

The latest Drainage Plan PRD-1B & 2B, Sheet 3 of 14, dated May 1971, shows future 10" dia. sanitary sewer and 21" dia. storm sewer in Westwood Avenue between Clermont Place and Gansevoort Boulevard, 10" dia. sanitary sewer and 12" dia. storm sewer in Gansevoort Boulevard at the intersection with Westwood Avenue and 10" dia. sanitary sewer and 21" dia. storm sewer in Clermont Place at the intersection with Westwood Avenue.

The application submitted the Topographical Survey, dated February 23, 2021, which shows the 60 feet width of the mapped Gansevoort Boulevard, from which 50 feet will be available for installation, maintenance, and/or reconstructions of the future and existing sewers and water main in Gansevoort Boulevard. Survey also shows the 50 feet width of the mapped Clermont Place, from which 34.8' will be available for the installation, maintenance, and/or reconstruction of the future sewer and existing water main in Clermont Place at the intersection with Westwood Avenue. In addition, the application has submitted a Site Plan A-101.00 2 of 2, dated March 17, 2021, which shows the 80 feet width of the mapped Westwood Avenue, from which 30 feet is an open width of the street plus the 5 foot

MINUTES

wide sewer corridor inside of the lot # 45, along the southerly lot line of lot # 45, a total of 35 feet, will be available for the installation, maintenance, and/or reconstruction of the future and existing sewers and water main in Westwood Avenue between Gansevoort Boulevard and Clermont Place. Based on the above, the NYC DEP has no objections to the proposed GCL 35 application.

By correspondence dated February 2, 2022, NYC Department of Transportation (“DOT”) states that it has reviewed the applicant’s documents received on June 22, 2021. According to the Staten Island Brough President’s Topographical Bureau, Westwood Avenue between Gansevoort Boulevard and Clermont Place is mapped at a width of 80 feet and has a CCO for 33 feet to 60 feet, as-in-use, dated October 24, 1988. The City does not have title.

Due to the fact that Lot 45 is nearly entirely within the mapped right-of-way of Westwood Avenue, DOT strongly recommends the applicant submit an application for City Map Change with the Department of City Planning (“DCP”) for a partial demapping of this portion of Westwood Avenue. This would negate the need for a Board of Standards and Appeals approval and remove this portion of Westwood from the City Map. DOT usually provides comments once DCP forwards the application package to DOT for review. However, in reviewing this application, please note the following comments:

- 1) Please dimension the remaining paved width of Westwood Avenue at its narrowest point on the site plan. DOT requires that a minimum paved width of at least 24 feet for two-way traffic.
- 2) The existing “No Standing Anytime” regulations on either side of Westwood Avenue between Clermont Place and Gansevoort Boulevard must also be retained. Please reflect this on the site plan.
- 3) There is a utility pole shown on the site plan within the limits of the proposed curb cut with the note “relocate existing utility pole”. Please identify where this pole will be relocated to and provide the approval by the appropriate utility. Note that all sidewalk appurtenances (e.g., poles, trees, etc.) must be located no closer than seven feet from the outside edges of any curb cut.
- 4) A minimum sidewalk width of five-foot sidewalk will be required. Please update the site plan accordingly.
- 5) The existing “STOP” sign and STOP-bar on Gansevoort Avenue should be shifted south to accommodate the new sidewalk being added along the north side of Westwood Avenue. Please reflect this change on the site plan.
- 6) Please clarify if any fencing will be installed along the perimeter of the property. It is recommended that any fence be installed with materials or a layout that preserves clear sight-lines between drivers traveling along

Westwood Avenue and drivers waiting to turn from Clermont Place and Gansevoort Boulevard. The corners at both intersections should remain clear of sight-distance obstructions. This is of particular importance at the Clermont Place/Westwood Avenue intersection since the STOP-bar Clermont Place is set back farther from Westwood Avenue, further limiting sight lines.

- 7) This application will be subject to additional review under the Builder’s Pavement Plan (“BPP”), which must be submitted to the DOB and DOT’s Pedestrian Ramp Program (“PRP”) unit for review. Please note the BPP regulation will require the following:
 - a. BPP partial roadway restoration and ramp upgrades required by the American Disabilities Act (“ADA”). Therefore, please include ramp upgrades at the northwest and southwest corners of the project scope. For ramps to remain, inspection forms demonstrating compliance must be submitted to PRP for review.
 - b. Install a parallel ramp at the northeast corner of Clermont Place and Westwood Avenue to provide pedestrian connectivity.
 - c. High visibility crosswalk markings will be required across the north leg of the Clermont Place/Westwood Avenue intersection, along with the new ramps, to connect the existing sidewalk to the new sidewalk along the north side of Westwood Avenue.

By correspondence dated May 6, 2022, DOT stated that it will not issue an additional letter for this application review and reiterated that the initial comments will be checked during DOT’s BPP review.

- 1) Please illustrate on the site plan the proposed distance between the curb cut and the utility pole, which the distance should be at minimum of seven feet.
- 2) Please show the splays on either side of the driveway curb cut on the site plan. One-foot splays are typically acceptable for residential curb cuts, this will be confirmed during the BBP review.
- 3) High visibility crosswalks and STOP messages, as per the DOT crosswalk detail, will be required across both Clermont Place and Gansevoort Boulevard intersections.
- 4) The STOP sign is shown to be very close to the proposed curb cut. All street signs must be at least seven feet from all curb cuts. The distance between all street signs and curb cuts must be shown on the site plan.
- 5) Please include corner radii in feet at both Clermont Place and Gansevoort Boulevard.

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- 6) Please see the document regarding DOT's policy for the swept path and Vehicle Tracking templates as examples of these requirements. The swept path analysis at both intersections will be required, using Vehicle Tracking template as examples of these requirements. The swept path analysis at both intersections will be required, using Vehicle Tracking software for SU-30 and FDNY-Sea grave (45.83 feet long) vehicles. However, if Autotum is the preferred method for the swept path analysis, the consultant may request a comparable settings file.

V.

Over the course of hearings, the Board raised concerns regarding the applicant's BPP, site plan, and survey which the Board stated needed to be dimensioned to show the rest of the proposed remaining street bed; the applicant's sight line drawings, and placement of the proposed "STOP" sign. In response, the applicant submitted revised plans including the location of the proposed "STOP" sign, a five-foot sidewalk on Westwood Avenue, an eight-foot front yard from the sidewalk to the residence, and a note stating, "No fencing to be provided on site". The plans demonstrate that these changes have changed the residence's footprint to 21'-3" by 48', 998 square feet of lot coverage, and the front yard off Clermont Place to 54'-2".

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*, the construction of a two-story, plus cellar and attic, two-family, detached residence contrary to Z.R. § 23-461(a) (side yard); *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved May 9, 2022"—Fifteen (15) sheets; and *on further condition*:

THAT the building is fully sprinklered;

THAT the distance between the curb cut and the utility pole must be a minimum of seven feet;

THAT there must be one-foot splays on either side of the driveway curb cut;

THAT high visibility crosswalks and STOP messages shall be required across both the Clermont Place and Gansevoort Boulevard intersections, as per the DOT standard crosswalk detail;

THAT the STOP sign must be at least seven feet from all curb cuts;

THAT the required swept path at both intersections must be submitted using Vehicle Tracking software for SU-30 and FDNY-Sea grave (45.83 feet long) vehicles or Autotum;

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.2021-36-BZ"), shall be obtained within four years, by May 9, 2026;

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 9, 2022.

2021-75-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for LGR 9th Street LLC, owner.

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a major development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-15 9th Street, Block 475, Lot 26, 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

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 ("DOB"), acting on New Building Application No. 420656347, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on April 25, 2022, after due notice by publication in *The City Record*, and then to decision on May 9, 2022. Community Board 1, Queens, waived its recommendation of this application.

The Premises are located on the southeast side of 9th street, between 38th Avenue and 40th Avenue, within an M1-3 zoning district, in Queens. With approximately 99 feet of frontage along 9th Street, 100 feet of depth, and 9,983 square feet of lot area, the Premises are occupied by an unfinished 16-story transient hotel.

I.

On August 31, 2018, DOB issued Permit No. 420656347-01-EQ-FN authorizing construction equipment and fencing at the subject site; Permit No. 420656347-01-FO-EA for excavation work at the Premises; Permit No. 420656347-01-FO for foundation work at the Premises; and Permit No. 420656347-01-NB for construction of the entire development and determined that the building would

MINUTES

comply with all applicable zoning regulations.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement of extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803.

Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. § 11-332(a) to complete construction and obtain a certificate of occupancy for the subject project was October 19, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on October 18, 2021, the applicant now seeks an extension of time to complete construction.

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 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).

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 states that as of October 1, 2021, approximately 95 percent of the scheduled working days for the development had been completed, constituting for 730 days out of the total 767 scheduled days. Moreover, the applicant represents that the remaining work to be completed is minor, interior, and storefront work. The applicant provided affidavits, photographs, and construction cost information showing that approximately 90 percent of the total construction cost has been expended, excavation and foundation work has been completed, and the entire superstructure of the development has been completed.

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 of October 1, 2021, approximately \$16,086,573.80 of the \$18,030,000 total costs of the development or approximately 90 percent of the total construction cost of the development has been paid or incurred as irrevocable financial commitments. 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.

Therefore, it is Resolved, that the Board of Standards

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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. 420656347-01-NB as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring October 19, 2023.

Adopted by the Board of Standards and Appeals, May 9, 2022.

CORRECTION: This resolution adopted on May 9, 2022, under Calendar No. 2022-5-BZY, is hereby corrected to read as follows:

2022-5-BZY

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

SUBJECT – Application November 17, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-04 11th Street, Block 474, Lot 31, 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 Scibetta5
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 (“DOB”), acting on New Building Application No. 42065497, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on April 25, 2022, after due notice by publication in *The City Record*, and then to decision on May 9, 2022. Community Board 1, Queens, waived its recommendation of this application.

The Premises are located on an irregularly shaped, through lot, which is bounded 11th Street to the east, 10th Street to the west, 38th Avenue to the north, and 40th Avenue to the south, within an M1-3 zoning district, in Queens. The Premises are comprised of 10,0872 square feet of lot area and are occupied by an unfinished 13-story transient hotel.

I.

On October 5, 2016, DOB issued Permit No. 420654697-01-EQ-FN for construction equipment and fencing; Permit No. 420654697-01-FO-EA for excavation; and Permit No. 420654697-01-FO for foundation work, including support of excavation. On March 13, 2017, DOB issued Permit No. 420654697-05-PL for underground plumbing, and on May 30, 2018, DOB issued Permit No.

420654697-01-NB for the development.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement or extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803. The applicant represents that the subject development vested automatically under the special vesting provisions of Z.R. § 42-111(e), because a foundation permit for the Development was lawfully issued on October 5, 2016, prior to April 23, 2018.

Additionally, pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. §§ 11-332(a) and 42-11(e) to complete construction and obtain a certificate of occupancy for the subject project was December 20, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction.

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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 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).

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 states that as of December 17, 2021, the most complex portions of the development have been completed. The applicant represents that the excavation and foundation work has been completed, and the entire superstructure of the development has been completed, leaving the balance of the remaining work as the completion of the interior work. 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 \$9,981,175 of the \$12,900,000 total cost of the development or approximately 80 percent. The applicant represents that this amount was expended on completion of excavation and installation of support of excavation, completion of the foundation, and completion and substantial enclosure of the superstructure of the development. 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.

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. 420654697-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring December 20, 2023.

Adopted by the Board of Standards and Appeals, May 9, 2022.

ZONING CALENDAR

2021-51-BZ

APPLICANT – Akerman LLP, for 37 Ave Richouse LLC, owner.

SUBJECT – Application August 10, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C4-2 zoning district.

PREMISES AFFECTED – 133-25 37th Avenue, Block 4970, Lot (s) 11, 18, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for deferred decision.

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 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

MINUTES

PUBLIC HEARINGS
MONDAY-TUESDAY, MAY 9-10, 2022
2:00 P.M.

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

ZONING CALENDAR

2020-64-BZ

APPLICANT – Jay Goldstein, Esq., for Congregation Ohr
Eliyahu Inc., owner.

SUBJECT – Application August 13, 2020 – 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.

PREMISES AFFECTED – 85-94 66th Road, Block 3144,
Lot 42 Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to July 18-
19, 2022, at 10 A.M., for continued hearing.

2020-69-BZ

APPLICANT – MBA Architects, for William Moses,
owner.

SUBJECT – Application September 9, 2020 – Variance
(§72-21) to permit the legalization of dwelling units
contrary to ZR 42-10. M1-1 zoning district.

PREMISES AFFECTED – 44 New Lots Avenue, Block
3860, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #16BK

ACTION OF THE BOARD – Laid over to
September 12-13, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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2022-27-BZ

101 East 150th Street, Block 2354, Lot(s) 0001, Borough of **Bronx, Community Board: 4.** Special Permit (§73-19) to permit the construction of a new school (UG 3) (Success Academy) contrary to ZR 42-10. M1-2 zoning district. M1-2 district.

2022-28-A

15 Bedell Street, Block 7702, Lot(s) 0134, Borough of **Staten Island, 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 prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District. R3X district.

2022-29-A

17 Bedell Street, Block 7702, Lot(s) 0135, Borough of **Staten Island, 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 prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District. R3X district.

2022-30-A

19 Bedell Street, Block 7702, Lot(s) 0136, Borough of **Staten Island, 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 prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District. R3X district.

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

CALENDAR

TELECONFERENCE PUBLIC HEARINGS MONDAY-TUESDAY, JULY 18-19, 2022 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, July 18th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday July 19th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

APPEALS CALENDAR

2019-96-A thru 2019-155-A

APPLICANT – Rampulla Associates Architects, LLP, for ELOC FTK, LLC, owner.

SUBJECT – Application May 23, 2019 – Application to permit the construction of 48 two family and 5 single family homes not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District.

PREMISES AFFECTED – Bluebelt Loop, Cole Street, Block(s) 7558, 7564, 7566 & 7562, Lot (s) 53, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 111, 110, 109, 108, 107, 41, 106, 40, 105, 39, 104, 38, 103, 37, 102, 36, 101, 35, 100, 98, 99, 34, 97, 33, 96, 32, 95, 31, 94, 130, 193, 92, 91, 190, 25, 26, 23, 27, 22, 28, 21, 29, 20, 19, 18, 17, 16, 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

2021-57-A

APPLICANT – Eric Palatnik, P.C., for Raphael Holguin, owner.

SUBJECT – Application August 24, 2021 – Proposed construction of a two-story commercial (UG 6) building located partially in the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1900 Hylan Boulevard, Block 3666, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

2022-2-A

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for RXR-LBA Red Hook Owner LLC, owner.

SUBJECT – Application January 11, 2022 – to permit the construction within the unbuilt portion of a mapped street contrary to General City Law §35 and ZR §72-01(g). M3-1 zoning district.

PREMISES AFFECTED – 728 Court Street, Block 623, Lot(s) 1, 20, 62 and 93, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ZONING CALENDAR

2021-42-BZ

APPLICANT – Law Office of Lyra J. Altman, for Project L29 LLC, owner.

SUBJECT – Application June 11, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Ohr Shraga D'Veletzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). R2 zoning district.

PREMISES AFFECTED – 2901 Avenue L, Block 7629, Lot(s) 6 and 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2021-47-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hilda Lovera, owner.

SUBJECT – Application July 27, 2021 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-45 (required front yard). R3-2 zoning district.

PREMISES AFFECTED – 2100 Hermany Avenue, Block 3685, Lot 9, Borough of Bronx.

COMMUNITY BOARD #9BX

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY, MAY 23-24, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

887-54-BZIV

APPLICANT – Eric Palatnik, P.C, for Napa Realty Corp., owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued use of gasoline station (BP Amoco) with accessory convenience store which expires on June 15, 2020. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, Block 6321, Lot 21, 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 Scibetta5
Negative.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, that permitted the use of the Premises as an automotive service station with accessory convenience store and expired on June 15, 2020.

A public hearing was held on this application on November 29, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2022, and then to decision on May 23, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 11, Queens, recommends approval of this application. The Board received one form letter in support of this application.

The Premises are located on the north side of Northern Boulevard, bounded by 218th Street to the west and 219th Street to the east, within an R6B (C2-2) zoning district, in Queens. With approximately 200 feet of frontage along Northern Boulevard, 101 feet depth, and 20,070 square feet of lot area, the Premises are occupied by an existing automotive service station (Use Group 16B) with accessory convenience store (2,900 square feet of floor area).

The Board has exercised jurisdiction over the Premises since May 3, 1955, when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by an automobile showroom with supplementary servicing, including gasoline dispensing service, for a term of 15 years.

On March 18, 1958, under the subject calendar number, the Board the Board granted an amendment to

permit the construction of a gasoline service station, lubricatorium, minor auto repairs, car washing, office, sales, and storage and parking of motor vehicles.

Subsequently, the grant has been amended and the term extended by the Board at various times.

On March 27, 2001, under the subject calendar number, the Board further amended the grant to permit the construction of a 2,900 square-foot accessory convenience store and the installation of a metal canopy over the existing pump islands, and the term was extended for a term of ten years from the expiration of the prior grant, to expire on September 23, 2010.

On June 15, 2010, under the subject calendar number, the Board extended the term of the grant for ten year, to expire on June 15, 2020, and permitted (1) the replacement of the five previously existing 4,000 gallon underground storage tanks with three 10,000 gallon tanks; (2) the installation of 15 lighting fixtures to the canopy instead of the 12 fixtures shown on the approved plans; and (3) a 25-foot curb cut on 219th Street, instead of the 24-foot curb cut shown on the approved plans, on condition that the Premises be maintained free of debris and graffiti; landscaping be provided and maintained on the Premises; the conditions appear on the certificate of occupancy; and, a new certificate of occupancy be obtained by June 15, 2011.

On August 23, 2011, under the subject calendar number, the Board further amended the grant to extend the time to obtain a certificate of occupancy for two years, to expire on August 23, 2013, on condition that all use and operations substantially comply with the BSA-approved plans associated with the prior grant; a new certificate of occupancy be obtained by August 23, 2013; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the 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 Premises is operated as a 24-hour gasoline service station, with a 24-hour convenience store, with six dispensers for gas, eight parking stalls with one ADA accessible space and three 10,000-gallon underground storage tanks. Trash is kept in a six-foot-high chain link fence dumpster enclosure with opaque slats at the corner of Northern Boulevard and 218th Street and is picked up Mondays, Wednesdays, and Fridays at night. Fuel deliveries are completed two to three times per week as needed during off peak hours when roadway and site traffic volumes are lightest. Canopies are equipped with in canopy fire suppression systems and fire extinguishers are mounted at each canopy column and in the attendant

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area. All staff are trained in the event of a spill to employ the use of absorbent materials/pads, which are disposed of in a hazardous waste drum for shipment off site to a proper disposal facility. The applicant represents that signage complies with underlying signage regulations as follows: Northern Boulevard, a total of 115 square feet of signage with 25 square feet of non-illuminated signage and 90 square feet of illuminated signage; 219th Street, a total of 90 square feet of signage with 25 square feet of nonilluminated signage and 65 square feet of illuminated signage; 218th Street, a total of 25 feet of signage with 25 square feet of illuminated signage.

The Board takes no position with respect to the compliance of signage at the Premises and defers to the Department of Buildings to determine and ensure signage at the Premises complies with underlying C2 zoning regulations with respect to corner lots.

The Fire Department states, by letter dated November 18, 2021, that a review of their records indicates that the subject automotive service station is current with Fire Department 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 *amend* the resolution, dated May 3, 1955, as amended through August 23, 2011, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to June 15, 2030, *on condition* that all work, site conditions and operations shall substantially conform to drawings filed with this application marked “Board Approved May 23, 2022” –Seven (7) sheets; and *on further condition*:

THAT the term of the grant shall expire on June 15, 2030;

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

THAT landscaping and fencing shall be repaired and replaced as necessary to be maintained in first-class condition;

THAT walls of the accessory building shall be maintained at all times in first-class condition;

THAT signage shall comply with underlying zoning regulations;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 887-54-BZ”), shall be obtained within one year, by May 23, 2023;

THAT this approval is limited to the relief granted by

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

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

THAT the Department of Buildings must 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 23, 2022.

CORRECTION: This resolution adopted on May 23, 2022, under Calendar No. 1181-80-BZ, is hereby corrected to read as follows:

1181-80-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Sai Yan Chen, owner.

SUBJECT – Application May 5, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted a four story office and warehouse building which expired on April 7, 2021. R6 zoning district.

PREMISES AFFECTED – 62-07 Woodside Avenue, Block 1294, Lot 20, 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 Scibetta5
Negative.....0
THE RESOLUTION –

This is an application for an extension of term for a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted a four-story office and warehouse building and expired on April 7, 2021 and an amendment to eliminate the term of the grant. A public hearing was held on this application on March 28, 2022, after due notice by publication in *The City Record*, and then to decision on May 23, 2022. Community Board 2, Queens, recommends approval of the application.

The Premises are located on the north side of the intersection of Woodside Avenue and 63rd Avenue, within a C1-3 (R6) zoning district, in Queens. With approximately 61 feet of frontage along Woodside Avenue, 71 feet of depth, and 2,923 square feet of lot area, the Premises are occupied by a four-story Use Group (“UG) 6B office and warehouse.

The Board has exercised jurisdiction over the Premises since April 7, 1981, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, within an R6 zoning district, the erection of a four-story office and warehouse building on condition that all work substantially conform to drawings as they

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apply to the objection noted and filed with the application; the variance be limited to a term of 20 years, to expire on April 7, 2001; the hours of operation be restricted to 8:00 a.m. to 6:00 p.m., Monday through Saturday, closed on Sunday; accessory business signs comply with the C1 zoning district regulations; the Premises be fully sprinklered and properly maintained with a central office connection; all laws, rules, and regulations applicable be complied with; and substantial construction be completed in accordance with Z.R. § 72-23.

On May 11, 1982, under the subject calendar number, the Board amended the resolution to extend the time to complete the work on condition that substantial construction be completed within one year, by April 7, 1983. On July 19, 1983, under the subject calendar number, the Board further amended the resolution to extend the time to complete the work on condition that substantial construction be completed within one year, by April 7, 1984.

On October 16, 2001, under the subject calendar number, the Board further amended the resolution to extend the term of the variance, on condition that the term be limited to 20 years, to expire on April 7, 2021; the Premises be maintained in substantial compliance with the existing conditions plan submitted with the application; other than herein as amended, the resolution be complied with in all respect; and a certificate of occupancy be obtained within 18 months from the date of the resolution, by April 16, 2003.

The term of the variance having expired, the applicant now seeks an extension and amendment to eliminate the term of the grant. The applicant represents that since the prior grant, there have been minor, non-structural changes that do not affect the previously approved means of egress, and the building has remained in substantial compliance with the Board's original grant. However, the applicant notes that while the use of each floor remains consistent with the Board's grant, the interior layout has been modified for the benefit of varying commercial tenants. The applicant requests that the term of the grant be eliminated based on the applicant's history of compliance, and at hearing, the Board requested the applicant provide proof of compliance with the terms of the prior grants. In response, the applicant submitted an architectural letter stating that there are currently no signs on the building, thereby, making compliance with C1 zoning district sign regulation moot; the October 2002 certificate of occupancy notes that the current operation at the site is limited to "warehouse and accessory uses"; and the fire sprinkler company report which declares that the Premises are fully sprinklered.

Based upon its review of the record, the Board has determined that the extension of term of the variance and amendment to eliminate the term of the grant 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 11, 1982, as amended through October 16, 2001, so that as amended this portion of the resolution shall read: "to extend the term of the variance and to amend the conditions of the grant to eliminate the term, *on condition*;

THAT accessory business signs comply with the C1 zoning district regulations;

THAT the Premises be fully sprinklered and properly maintained with a central office connection;

THAT all uses at the site must be limited to UG 6B including the cellar, and, therefore, any storage in the cellar must be accessory to UG 6B use;

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. 1181-80-BZ'), shall be obtained within two years, by May 23, 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 23, 2022.

406-82-BZVII

APPLICANT – Eric Palatnic, P.C., for Adolph Clausi, owner.

SUBJECT – Application January 7, 2022 – Extension of Time to Obtain a Certificate of Occupancy 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 November 11, 2021. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th 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 Scibetta5

Negative:0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy for a special permit, granted pursuant to Z.R. § 73-243, which expired on November 11, 2021 and permitted the operation of an accessory drive-thru to an eating and drinking establishment. A public hearing was held on this application on March 28, 2022, after due notice by publication in *The City Record*, and then to decision on May 23, 2022.

The Premises are located on the northeast corner of 86th Street and 24th Avenue, in a C1-3 (R5) zoning district, in Brooklyn. With approximately 200 feet of frontage a long

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86th Street, 100 feet of frontage along 24th Avenue, 20,00 square feet of lot area, the Premises are occupied by an existing two-story Use Group ("UG") 6 eating and drinking establishment operated as McDonald's, with accessory drive-thru.

The Board has exercised jurisdiction over the Premises since January 19, 1983, when, under the subject calendar number, the Board granted a special permit pursuant to Z.R. § 73-243, to permit, in a C1-3 (R5) zoning district, at an existing eating and drinking establishment, the installation of an accessory drive-thru facility on condition that all work substantially conform to drawings as they apply to the objection noted and filed with the application; the permit be for a term of 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 in accordance with Z.R. § 72-23.

On May 3, 1988, under the subject calendar number, the Board amended the resolution to extend the term of the special permit, on condition that the term of the special permit expire five years from the date of expiration of the prior grant, on January 18, 1993; and other than as amended the resolution be complied with in all respects. On October 5, 1993, under the subject calendar number, the Board further amended the resolution to extend the term of the special permit for five years from the expiration of the date of the prior grant to January 18, 1998, on condition that the Premises be maintained in substantial compliance with the existing and proposed conditions drawing submitted with the application; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by October 6, 1994.

On March 14, 2000, under the subject calendar number, the Board further amended the resolution to permit the addition of a window to the drive-thru and an extension of term, on condition that the term of the special permit be for five years, from January 18, 1988 through January 18, 2003; the left turn sign at 24th Avenue be eliminated; the Premises be kept clean of debris and graffiti; the drive-thru only operate until 12:00 midnight and the parking lot be secured after business hours; the Premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended, the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by March 14, 2001.

On April 29, 2003, under the subject calendar number, the Board further amended the resolution to permit the extension of the term of the special permit for an additional five years from January 18, 2003, to expire on January 18, 2008, on condition that all work substantially conform to drawings as they apply to the objections noted and 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 above conditions and all

conditions from prior resolutions appear on the certificate of occupancy; the approval is limited to 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) and/or configuration(s) not related to the relief granted.

On July 22, 2008, under the subject calendar, the Board further amended the resolution to permit an extension of the term of the special permit for an additional five years, to expire on January 18, 2013, and an extension of six months to obtain a certificate of occupancy, to expire on January 22, 2009, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; the grant expire on January 18, 2013; the above condition and all relevant conditions from prior grants appear on the certificate of occupancy; a certificate of occupancy be obtained by January 22, 2009; 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 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 resolution to permit an extension of one year to obtain a certificate of occupancy, to expire on May 3, 2012, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; the grant expire on January 18, 2013; the above conditions and all relevant conditions from prior grants appear on the certificate of occupancy be obtained by May 3, 2012; all conditions from 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 September 11, 2012, under the subject calendar number, the Board further amended the resolution to permit an extension of one year to obtain the certificate of occupancy, to expire on September 11, 2013, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; the grant expire on January 18, 2013; the above conditions and all relevant conditions from prior grants appear on the certificate of occupancy be obtained by September 11, 2013; all conditions from the prior resolution not specifically

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waived by the Board remain in effect; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and 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 February 11, 2014, under the subject calendar number, the Board further amended the resolution to permit an extension of six months to obtain a certificate of occupancy, to expire on August 11, 2014, on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the grant expire on February 11, 2019; the signage comply with the C1 zoning district regulations; directional signage be limited to a total of 12 square feet per the Z.R. § 12-10 definition of “sign”; the above 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 is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(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 January 28, 2020, 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 special permit for five years, to expire on February 11, 2024, on condition that all work and site conditions conform to drawings filed with the application; the term of the special permit expire on February 11, 2024; the hours of operation of the accessory drive-thru be limited to 6:00 a.m. to 11:00 p.m., daily; the signage comply with C1 district regulations; directional signage be limited to a total of 12 square feet, per the Z.R. § 12-10 definition of “sign”; the Premises be maintained free of debris and graffiti; the above conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar number, be obtained within one year and an additional six months, in light of the state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 11, 2021; 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; 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.

01 The time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. The applicant states that it had numerous delays due to current conditions related to the COVID-19 pandemic. In support of its request for the two-year extension of time, the applicant submitted an anticipated schedule to obtain a certificate of occupancy, including time to obtain signoffs and remove violations at the site. At hearing, the Board raised concerns regarding the nature of the site such as storage containers and cracks on the trash enclosure. In response, the applicant submitted images of the cleaned-up perimeter of the site, the repaired trash enclosure and the janitorial supplies and maintenance equipment inside the storage container.

Based upon its review of the record, the Board has determined that the requested extension of time to obtain the certificate of occupancy 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 18, 1983, as amended through January 28, 2020, so that as amended, this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for two years, to expire on May 23, 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-thru 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 two years, by May 23, 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 23, 2022.

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17-92-BZ

APPLICANT – Eric Palatnik, P.C., for E & O Realty, owner; Cugine Foods, LLC, lessee.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the operation of an eating and drinking establishment with accessory drive thru which expired on December 6, 2017; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 60-06/12 Northern Boulevard, Block 1183, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension to obtain a certificate of occupancy of a previously approved variance, granted pursuant to Z.R. § 72-21, which permitted the operation of an eating and drinking establishment with accessory drive-thru and expired on December 6, 2017.

A public hearing was held on this application on December 13, 2021, after due notice by publication in *The City Record*, and then to decision on May 23, 2022.

The Premises are located on the southeast corner of Northern Boulevard and 60th Street, within an R5 zoning district, in Queens. With approximately 200 feet of frontage along Northern Boulevard, 100 feet of frontage along 60th Street, 29,997 square feet of lot area, the Premises are occupied by an existing one-story building which operates as a restaurant with a drive-thru facility.

The Board has exercised jurisdiction over the Premises since July 26, 1994, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R5 zoning district, the proposed construction of an eating and drinking establishment with accessory drive-thru facility and parking (Use Group (“UG”) 6) which does not conform to district use regulations on condition that all work substantially conform to drawings as they apply to the objection filed with the application; an 8' high fence be provided in the rear lot of the Premises to prevent access to the rear yard; landscaping and street trees and fencing be installed and maintained in accordance with BSA-approved plans; the hours of operation be limited to 8:00 a.m. to 1:00 a.m.; all signs be in accordance with BSA-approved plans; garbage pick-ups be limited to weekday daytime hours; the term of the variance be limited to 20 years, to expire on July 19, 2014; the above conditions appear on the certificate of occupancy; in accordance with a Conditional Negative Declaration signed by the applicant on June 3, 1994 and duly published, the applicant has agreed to the following:

1. The applicant submit the following signal

mitigation measures to the NYC Department of Transportation’s (“DOT) Office of Project Analysis and Division of Signals and Street Lighting for implementation when the project is built and occupied:

- a. During the midday, weekday PM and Saturday peak periods, the potential traffic impacts at the intersection at Northern Boulevard and Brooklyn-Queens Expressway southbound ramp be mitigated by removing one second from the east-west green time and allocating this one second to the southbound phase.
- b. During the Saturday peak period, the potential traffic impacts at the intersection of Northern Boulevard and Broadway be mitigated by removing one second from the east-west pedestrian clearance phase of 26 seconds and allocating it to the north-south phase.

2. The applicant submit a soil and groundwater sampling protocol to the Department of Environmental Protection’s (“DEP”) Bureau of Environmental Remediation and Enforcement (“BERE”) for review and approval. In addition, remedial actions determined to be necessary based on the testing results be submitted for approval by DEP/BERE. No site grading, excavation, or building construction begin prior to DEP/BERE’s written approval of the sampling protocol and remediation program;

the development, as approved, is subject to verification by Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the Department; and substantial construction be completed in accordance with Z.R. § 72-23.

On December 6, 2016, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to grant an extension of the term of the variance for a term of 20 years from the expiration of the last grant, to expire on July 19, 2034, on condition that all work and site conditions comply with drawings filed with the application; the grant be limited to a term of 20 years, expiring on July 19, 2034; landscaping, street trees, and fencing be installed and maintained in accordance with BSA-approved plans; the hours of operation be limited to 8:00 a.m. to 1:00 a.m.; all signage be in accordance with BSA-approved plans; garbage pick-up be limited to 6:00 a.m. to 10:00 a.m. on weekdays; the menu board be permanently maintained at a maximum of 18 dBA; all conditions from the prior resolution not specifically waived by the Board remain in effect; the above conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained within one year, by December 6, 2017; this approval is limited to the relief granted by the Board in response to specifically cited and filed Department

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of Buildings/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) and/or configuration(s) not related to the relief granted.

The time to obtain a certificate of occupancy having expired, the applicant now seeks a two-year extension of time to obtain a certificate of occupancy. The applicant claims that delays related to the COVID-19 pandemic have necessitated this application, including coordination with the design team on updated plans, new plan submissions through the DOB NOW portal, withdrawal submissions on legacy applications, and scheduling the inspection with the Department of Buildings.

By letter dated December 9, 2021, the Fire Department's Bureau of Fire Prevention states that it has reviewed the application and conducted an inspection at the Premises and Violation Order (VO#E623874) for failure to obtain a certificate of operation. An application has been filed with the Department of Buildings (PA#Q00149055) that has a filing status of "approved". The Fire Department has issued a progress status for the Violation Order due to the application currently before the Board of Standards and Appeals. If the extension of time is granted by the Board, the Fire Department will continue its inspection of these Premises for compliance with the grant and Violation Order. Based upon the foregoing, the Fire 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.

At hearing, the Board requested proof of compliance with the terms of the prior grant, specifically decibel levels, lighting, garbage pick-up, and noise at the Premises. The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated March 10, 2022, 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, May 23, 2022.

5-98-BZIII

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

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

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 under Z.R. § 72-21, that permitted the use of the Premises as a garden supply sales and nursery establishment (Use Group 17) with accessory parking and storage and expired on February 23, 2019.

A public hearing was held on this application on January 11, 2021, after due notice by publication in *The City Record*, with continued hearings on March 8, 2021, and May 9, 2022, and then to decision on May 23, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 15, Brooklyn, recommends a approval of this application.

The Premises are located on the west side of McDonald Avenue, between Quentin Road and Avenue P, within an R5 zoning district and the Special Ocean Parkway District, in Brooklyn. With approximately 70 feet of frontage along McDonald Avenue, 107 feet of depth, and 7,473 square feet of lot area, the Premises are occupied by a garden supply sales and nursery establishment (Use Group 17) with one-story accessory parking and storage building.

The Board has exercised jurisdiction over the Premises since May 5, 1981, when, under BSA Cal. No. 1046-80-BZ, the Board granted a variance to permit the construction of a one-story building for accessory parking and storage for an open garden supply sales and nursery establishment.

On June 29, 1982, under BSA Cal. No. 1046-80-BZ, the Board amended the resolution to permit changes to the bulk parameters of the building.

On February 23, 1999, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the re-establishment of the Premises as a garden supply sales and nursery establishment (Use Group 17) with accessory parking and storage on condition that the term of the variance be limited to ten years, to expire February 23, 2009; the Premises be maintained free of debris and graffiti; the Premises be fenced off with barbed wire; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one year, by February 23, 2000.

On June 9, 2009, under the subject calendar number, the Board amended the resolution to extend the term for ten years, to expire February 23, 2019, on further condition that signage comply with C1 zoning district regulations, and a new certificate of occupancy be obtained by December 9, 2009.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed

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less than two years since the expiration of the term of the variance, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and 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, in response to Board comments over the course of hearings, improvements have been made to the Premises to reduce the impact of the use on the surrounding area. These improvements include the removal of all graffiti and repainting/re-stuccoing of all structures; refurbishment and replacement of fencing; replanting of ten-foot-wide evergreen planting buffer with plantings made at least four feet tall, and to grow to eight feet within four years, along the rear lot line coincident with adjacent residential property; re-pavement and/or refurbishment of all walkways in and around the Premises; removal of all barbed wire from the fencing and the brackets; and, removal of all exterior flood lighting (all exterior lighting), determining that same is not needed for future operation. The applicant seeks a 20-year extension of term and notes that the Premises has received no complaints regarding the use of the site.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated February 23, 1999, as amended through June 9, 2009, so that as amended this portion of the resolution shall read: "to extend the term of the variance, for a garden supply sales and nursery establishment (Use Group 17) with accessory parking and storage, for 20 years, to February 23, 2039, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Board Approved May 23, 2022"—Six (6) sheets; and on *further condition*:"

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

THAT signage shall comply with C1 zoning district regulations;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 5-98-BZ"), shall be obtained within one year, by May 23, 2023;

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

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

THAT the Department of Buildings must 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 23, 2022.

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board's Rules. R5B zoning district.

PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

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 variance, under Z.R. § 11-411, which permitted a reinstatement of a prior Board approval permitting the extension of a legal non-conforming commercial laundry use within a residential zoning district and legalized a one-story enlargement of 763 square feet in the rear of the lot for additional storage for the commercial laundry and expired on August 11, 2019, and an extension of time to obtain a certificate of occupancy that expired on February 11, 2010.

A public hearing was held on this application on September 28, 2021, after due notice by publication in *The City Record*, with continued hearings on December 13, 2021, and May 10, 2022, and then to decision on May 23, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 7, Brooklyn, waived its recommendation of this application.

The Premises are located on the north side of Prospect Avenue, between Eighth Avenue and Prospect Park West, within an R5B zoning district, in Brooklyn. The Premises are comprised of two tax lots with frontages on Prospect Avenue: a 132-foot frontage with a 171-foot depth occupied by commercial laundry buildings (Building A, a three-story office building with approximately 4,480 square feet of floor area; Building B is a one-story laundry building with approximately 5,472 square feet of floor area; Building C is a two-story laundry building with approximately 17,442 square feet of floor area) and a yard (the "East Portion"), and a 150-foot frontage with an approximately 150-foot depth with a one-story laundry building (approximately 2,303 square feet of floor area) and an enclosed 36-foot wide loading platform and shed (4,550 square feet of floor area) (the "West Portion"); there is also a 153-foot by 55-

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foot rear portion which connects the two frontages and is occupied by a laundry building (12,000 square feet of floor area)(the “Rear Portion”).

The Board has exercised jurisdiction over the Premises since May 29, 1951, when, under BSA Cal. No. 58-51-BZ, the Board granted a variance to permit the erection of a 20,806 square-foot garage building on the West Portion in addition to the approximately 40,000 square feet of existing laundry buildings on the East Portion and Rear Portion, and the extension of an existing garage to be used as part of the existing commercial laundry. The approved 20,806 square-foot garage building on the West Portion was never constructed.

On May 28, 1963, under BSA Cal. No. 58-51-BZ the Board approved a one-story garage building, a one-story office building and a modified off-street loading platform on the West Portion of the site, in addition to the approximately 40,000 square feet of existing laundry buildings on the East Portion and Rear Portion. The approved one-story garage building on the West Portion was never constructed.

Subsequently, under BSA Cal. No. 58-51-BZ, the grant was amended and the term extended at various times.

On August 11, 2009, under the subject calendar number, the Board granted a reinstatement, under Z.R. §§ 11-411 and 11-412, of a prior Board approval permitting the extension of a legal non-conforming commercial laundry use within a residential zoning district, and an amendment to the approved plans to legalize a one-story enlargement of 763 square feet in the rear of the lot for additional storage for the commercial laundry, on condition that any and all work substantially conform to drawings as they apply to the objection, filed with the application; the grant be for a term of ten years, to expire on August 11, 2019; all mechanical and ventilation equipment comply with the Administrative Code; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by February 11, 2010; an acoustical wall with a height of eight feet be installed along the western lot line, as reflected on the BSA-approved plans; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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 term of the variance and the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, and more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of §§ 1-07.3(b)(2) and 1-07.3(d)(2), of the Board’s Rules to permit the filing of this

application. Pursuant to the Board’s Rules, the applicant submitted evidence demonstrating that the Premises has continuously operated since term’s expiration and states that, as the Premises has been operating since 1948 as a laundry facility, substantial prejudice would result without a waiver of the Board’s Rules to permit the filing of this application.

The applicant represents that the Premises continue to be operated in compliance with the terms of the Board’s approval, with the exception of a current certificate of occupancy herein requested, and no changes have been made to the existing buildings. The applicant states that the Premises, a commercial laundry service serving commercial establishments, employs 41 workers, most of whom use mass transit and those that park at the Premises park on the western most parking lot. Access to the building is limited to business-related purposes only. There are designated areas for loading bays adjacent to the building and the Applicant represents that parking is organized and controlled to minimize noise and traffic concerns. These controls include no radio playing (at any volume) while loading or unloading trucks; no truck idling whatsoever while double parked on the street waiting for a space to unload the truck; and, helpers must guide a driver when backing into the yard.

Further, in response to Board concerns regarding the potential for adverse noise impacts, the applicant submitted photographs and revised the plans to demonstrate the presence of sound monitoring equipment at the Premises which allows the operator to actively monitor noise levels from the operation and prevent and address adverse noise impacts. The Board notes that this operator shall consider acoustical attenuation measures installed on the property fences to continue to address future adverse noise impacts and improve monitoring.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated August 11, 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 August 11, 2029, and time to obtain a certificate of occupancy for one year, by May 23, 2023, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Approved May 23, 2022” —Nine (9) sheets; and *on further condition*:

THAT the term of the variance shall expire on August 11, 2029;

THAT all mechanical and ventilation equipment comply with the Administrative Code;

THAT sound monitoring equipment shall be maintained to ensure no adverse noise impacts to surrounding properties;

THAT the operator shall coordinate with neighbors forthright to reduce adverse noise impacts upon the receipt

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of a noise complaint;

THAT no radio playing (at any volume) shall be permitted while loading or unloading trucks at the Premises;

THAT no truck idling shall be permitted while double parked on the street waiting for a space to unload the truck;

THAT helpers shall guide a driver when backing into the yard;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 42-09-BZ”), shall be obtained within one year, by May 23, 2023;

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

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

THAT the Department of Buildings must 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 23, 2022.

148-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 11 Avenue A Realty LLC, owner.

SUBJECT – Application November 12, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit multi-family residential use which expired on December 15, 2019; Waiver of the Board’s Rules of Practice and Procedures. R8A/C2-5 zoning districts.

PREMISES AFFECTED – 11 Avenue A, Block 429, Lot 39, 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 Scibetta5

Negative:0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a variance, under Z.R. § 72-21, that permitted multi-family residential use, contrary to Z.R. § 23-32 and expired on December 15, 2019.

A public hearing was held on this application on May 10, 2022, after due notice by publication in *The City Record*, and then to decision on May 23, 2022.

The Premises are located on the west side of Avenue A, between East 1st Street and East 2nd Street, within an

R8A (C2-5) zoning district, in Manhattan. With approximately 19 feet of frontage along Avenue A, 80 feet depth, and 1,500 square feet of lot area, the Premises are occupied by an existing three-story plus cellar commercial building with 3,784 square feet of floor area (2.52 FAR).

The Board has exercised jurisdiction over the Premises since December 15, 2015, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit multi-family residential use, contrary to Z.R. § 23-32, on condition that any and all will substantially conform to drawings as they apply to the objections, filed with this application; the façade of the building be comprised of the materials as specified on sheet 12 of the BSA-approved plans; 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); 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 have completed construction and obtain a certificate of occupancy 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 construction has not yet commenced at the Premises. The applicant states that delays have occurred due, in part, to renegotiating the construction project with neighboring sites to ensure structural safety for their buildings; by the time all the parties had agreed, COVID-19 became prevalent, and the owner faced financial difficulties that prevented construction. The applicant submits a construction timeline which estimates a 24-month period from commencement of construction to final inspections and, accordingly, seeks a four-year extension of time to complete construction.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and 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, dated December 15, 2015, so that as amended this portion of the resolution shall read: “to extend the time to complete construction and obtain a certificate of occupancy for four years, to May 23, 2026, *on condition*:

THAT the façade of the building be comprised of the materials as specified on sheet 12 of the BSA-approved plans;

THAT substantial construction shall be completed by May 23, 2026;

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. 148-14-BZ”), shall be obtained within four years, by May 23, 2026;

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 23, 2022.

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 4-5, 2022, at 10 A.M., for adjourned hearing.

171-97-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Rocco Sacco, owner.

SUBJECT – Application August 31, 2021 – Extension of Term of a previously approved variance which permitted the operation of a trade school (UG 9), eating and drinking establishment (UG 6), retail (UG 6) and accessory uses which expired on October 20, 2018; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 65-01 Kissena Boulevard, Block 6742, Lot 10, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC., owner; Briad Wencco LLC, lessee.

SUBJECT – Application April 28, 2021 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy’s) which expired February 2, 2021; Amendment requesting a change in hours of operation contrary to the previous board approval; Waiver of the Rules. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Block 810, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10:00 A.M. for adjourned hearing.

197-08-BZ

APPLICANT – Law Office of Jay Goldstein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application June 9, 2021 – Extension of Time to Complete Construction and Extension of Time to Obtain a CO of a previously approved Variance (§72-21) to permit a four-story and penthouse residential building which expired on June 18, 2021. R4 district.

PREMISES AFFECTED – 341 Troy Avenue, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10:00 A.M. for decision, hearing closed.

55-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yeshivas Novominsk, owner.

SUBJECT – Application October 1, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a proposed enlargement of an existing dormitory accessory to an existing school (*Yeshivas Novominsk*) which expires on December 10, 2021. R5 zoning district.

PREMISES AFFECTED – 1690 60th Street, Block 5517, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10:00 A.M. for decision, hearing closed.

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2016-4249-BZIII

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner

SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow the development of a commercial building which expired on June 20, 2021, Waiver of the Board’s Rules of Practice and Procedures. C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10:00 A.M. for postponed hearing.

APPEALS CALENDAR

CORRECTION: This resolution adopted on May 23, 2022, under Calendar Nos. 2018-70-A through 2018-86-A, 2018-89-A & 2018-90-A, is hereby corrected to read as follows:

2018-70-A thru 2018-86-A, 2018-89-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 – 36, 37, 42, 43, 48, 49, 54, 55, 60, 61, 66, 67, 72, 73, 78, 79, 85, 96, 103 Santina Drive, Block 6517, Tentative Lots, 81-97, 100-101. Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE – Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings, dated April 20, 2018, acting on New Building Application Nos. 520290140, 520303680, 520303742, 520303788, 520332266, 520322990, 520332195, 520323409, 520332211, 520323445, 520319888, 520323436, 520323463, 520323418, 520319913, 520322954, 520322963, 520322972, and 520322927, reads in pertinent part:

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

A. No certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General

City Law.

B. Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street of frontage space contrary to section 501.3.1 of the 2014 NYC Building Code.”

This is an application under General City Law § 36 to permit, in an R3X zoning district and in the Special South Richmond Development District, the construction of 23 detached residences that do not front on a mapped street.

II.

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 June 2, 2020, October 19, 2020, February 8, 2021, and May 10, 2021, and then to decision on September 13, 2021. The record was reopened on February 28, 2022, to accept plans reflecting the Board’s approval with respect to fire safety, access, and FDNY requirements, and then a gain to decision on May 23, 2022. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 3, Staten Island, recommends disapproval of this application and questioned whether a homeowners association could effectively prevent potential issues regarding traffic, circulation, and maintenance of the proposed development.

The Premises are located in an R3X zoning district in the Special South Richmond Development District (“SSRDD”) on Staten Island, and is an irregular, approximately 511 feet long by 260 feet deep, 133,191 square foot zoning lot and tax lot (tax lot 100 on tax block 6517) set back approximately 257 feet 7 inches from Arbutus Avenue (an un-mapped Corporation Counsel Opinion street as of March 8, 1985), and accessed from Arbutus Avenue only by existing 410.81 feet long Santina Drive, a 30'-wide privately-owned, unmapped roadway that at present accesses three existing houses, built in approximately 1990, on tax lots 58, 59, and 60. Only lot 60 has approximately 44 feet of frontage on Arbutus Avenue, independent of the 15-foot-wide portion of Santina Drive located on the lot 60 tax lot. Lots 58 and 59 rely entirely on Santina Drive for access. Lots 58, 59, and 60 received GCL § 36 waivers pursuant to BSA Calendar Numbers 765-87-A, 766-87-A, and 767-87-A. Tax lots 58 and 59 contain single-family residences, each with a two-car garage. Tax lot 60 contains a two-family residence with a two-car garage. Denise Court, a 32-foot-wide privately owned, unmapped roadway connecting Arbutus Avenue to the residences fronting on Denise Court and to the northwest corner of the Premises is proposed to provide a fire apparatus access only route to the Premises by virtue of an access easement agreement.

III.

The applicant proposes to subdivide the current zoning lot into 23 zoning lots and construct 23 two-family detached homes accessed from Arbutus Avenue by an existing private unmapped roadway, Santina Drive, and fronting each new residence on the prolongation of Santina Drive. The

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applicant further states that the residences would vary in design and size from approximately 2,450 square feet to 3,097 square feet of floor area; would each be two stories with a cellar; and would be fully sprinklered. Additionally, the applicant states that the residences would conform to all the underlying zoning district bulk requirements as well as the requirements of the South Richmond Development District.

The applicant represents that due to physical constraints of existing occupied dwellings in mapping access to the landlocked site—namely, the house on tax lot 60 that fronts on Arbutus Avenue is owned and occupied by a party unrelated to this application and cannot, therefore, be demolished to allow for the widening of existing Santina Drive to meet minimum road width standards required for mapping—there is no indication that, absent a waiver of GCL § 36(2), any development, whatsoever, would be permitted. The applicant represents that mapping the proposed development is infeasible and may be an impossibility. Therefore, the applicant seeks relief from GCL § 36(2) which requires all dwellings to front on a mapped street.

Pursuant to GCL § 36(2), “[w]here 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, [. . .] [t]he 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 street or highway layout.”

Unlike the appellant in *Nello Development Corporation v. Perlmutter*, Index No. 80023/2020 (Sup. Ct. NY, Sept. 29, 2020), here, the applicant did not “create[] the need for the waiver . . .” and nothing in the record demonstrates the applicant’s ability to “develop the subject sites consistently with GCL § 36(2).” *Id.* Further, consistent with the court’s ruling in *Mount Builders, LLC v. Perlmutter*, 2020 WL 6801983, (N.Y. Sup. Ct. Nov. 18, 2020), *aff’d by Mount Builders, LLC v. Perlmutter*, 200 A.D.3d 616 (Dec. 28, 2021); *cert. denied by Mount Builders, LLC v. Perlmutter*, N.Y. Ct. of App. Mo. No. 2022-168 (Apr. 28, 2022), the instant applicant’s argued practical difficulty and unnecessary hardship is tantamount to a total inability to develop its property and not that mapping the access roadway would “[l]ower potential profits to a developer . . .” *id. at 4.* Furthermore, due to the existing substandard width of the access roadway on Santina Drive, further constrained by existing occupied houses, nothing in the record demonstrates that it would be possible to widen the existing portion of Santina Drive sufficient to qualify for mapping under GCL § 36(2).

IV.

Over the course of hearings, the Board questioned whether the proposed development could maintain effective circulation along the existing portion of 30-foot-wide Santina Drive in light of the proposed density of residences and prohibition on parking along existing Santina Drive, and

how a new Homeowners Association (“HOA”), of which only the homeowners of the proposed 23 new residential buildings would be members, would function to guarantee proper and safe maintenance of Santina Drive, especially in light of the new HOA’s relationship to three existing residential buildings fronting on the existing portion of Santina Drive that have a separate and existing HOA.

By letter dated June 12, 2018, the Department of Environmental Protection (“DEP”) states that based on its review of DEP maps, there is an 18"-diameter sanitary sewer, 24"-diameter storm sewer, 12"-diameter and 20"-diameter City water mains in Arbutus Avenue, and an 8"-diameter water main in the existing portion of Santina Drive. DEP adds that storm water and sanitary Drainage Management Plan for South Richmond, sheet 3 of 4, dated March 25, 2003, shows 18"-diameter sanitary sewer and 24"-diameter storm sewer in the bed of Arbutus Avenue. DEP states that the applicant must submit a letter from the Borough President’s Office for the status of the street, a copy of the official map (alteration map) of the City of New York and a certified Site Connection Proposal (SCP), showing how the internal sanitary drain is connected to the City sewer and storm water will be discharged from the property. DEP states that the applicant must submit an internal water main plan showing connection to the City water main and a proposed plan/survey, showing the existing easements and de-mapped streets crossing the existing lot #100. DEP states that, in addition, a tentative lot sheet must be submitted showing the existing and proposed lot numbers. DEP states that the proposed internal sanitary and storm drains, water main, and connections will be maintained by the owners, and will not be maintained by New York City. DEP states that they will continue GCL § 36 review upon receiving the required documentation.

By letter dated October 29, 2018, the Department of City Planning (“DCP”) states that it has reviewed the application pursuant to Z.R. § 107-08 for certification by the City Planning Commission for a future zoning subdivision from one zoning lot (Block 6517, Lot 100) into 23 new zoning lots to facilitate 23 two-family detached homes in an R3X zoning district. DCP states that it has significant concerns about the feasibility of the proposed subdivision plan and its compliance with the conditions of the certification being sought by the applicant. DCP states that it raised concerns with the applicant regarding the proposed future development given the constraints of the site, including, but not limited to, the lack of access to a mapped street network, potential traffic circulation concerns for emergency vehicles, and the number of proposed homes that would need an existing substandard road for access. DCP states that it appears that all 23 zoning lots will be accessed by a proposed private road (Santina Drive – 38' width curb to curb and 460' long and 76' wide turnaround) which a separate Homeowners Association is supposed to maintain. DCP states that the site does not have access to a final mapped street as the nearest mapped streets are Hylan Boulevard and Amboy Road located approximately 1,500 feet from the site. DCP further states that the proposal

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includes an access easement to Denise Court, also an existing private road, for emergency vehicle access; and that since this has not yet been reviewed by the NYC Fire Department and the access road raises additional concerns, it would make emergency access dependent on a third-party agreement. DCP states the application submitted to DCP does not establish how reliance on a private road, that was not intended to act as a through street for another development, is consistent with creating a safe and well-planned road network per the goals of the Special South Richmond Development District. DCP requested the applicant clarify the following:

- “How adjacent private roads, that provide the only means of ingress/egress to the proposed Subdivision Plan, will allow for adequate access for emergency vehicles and homeowners.
- Documentation on how the existing and proposed private roads will be maintained by multiple HOAs and any granting of rights of ways to adjacent private roads for the proposed subdivision.
- How adequate sanitary and storm sewer capacity would be addressed for the proposed development.
- It appears that NYSDEC freshwater wetland adjacent area extends into the site. DCP recommended that the applicant submit an application to DEC regarding the feasibility of the subdivision plan and provide an update to DCP.
- DCP recommended that the applicant confirm safe ingress/egress to the future subdivision and proposed private road with FDNY.
- DCP recommended that the applicant confirm whether existing infrastructure can support the future subdivision plan and any proposed development with DEP and DOB given the concerns regarding adequate sanitary and storm sewer capacity.”

As such, DCP requests that these comments be taken into consideration in the review of the application at the Board. Furthermore, DCP states that it does not believe it would be appropriate for applicant to obtain a GCL § 36 waiver, at this time, in light of the multiple concerns outlined above.

DCP recommends, by letter dated January 17, 2019, that the applicant indicate the boundaries of the agreed-on easement on a draft site plan or the survey, demonstrate safe emergency access to the proposed subdivision, and limit the number of proposed lots and future development to align with the goals of the South Richmond Plan and mitigate the above concerns.

By letter dated November 12, 2019, the Fire Department states (the “FDNY 2019 Approval”) that the Fire Department, Bureau of Operations has reviewed the site plan for the application and offers no objections. FDNY states that the applicant has provided two means of

unobstructed access, one via a dedicated roadway used strictly for emergency vehicle access and the second via a 30-foot-wide private street which shall have all parking restricted; FDNY further states a standard width of 34 feet with parking permitted on both sides would have considerably less drivable street space. The FDNY 2019 Approval is further conditioned on the following:

All proposed units must be fully sprinklered.

A restrictive declaration agreement must be in place, submitted with this approval for the Department of Building permanent files which prohibits any obstruction along Santina Drive from the intersection of Arbutus Avenue until the intersection of Denise Court. The location and requirements of this requirement are further detailed on the stamped approved plan (“FDNY Approved Plan”)

There must be No Standing throughout the thirty-foot-wide portion of the Santina Drive from where Santina Drive intersects with Arbutus Avenue until the proposed eastern side turn-around (this is further illustrated on FDNY Approved Plan). This portion of the street must have signage as required by the NYC Fire Code and pavement markings along both side of the street with diagonal striping and staking: NO STANDING FIRE ZONE

The proposed western side turn-around which extends Santina Drive to the intersecting street of Denise Court must have No Standing throughout (this is further illustrated on the FDNY Approved Plan). Since this portion of Santina Drive is a dedicated secondary fire apparatus access road, all vehicular traffic is prohibited from use of this road except emergency vehicles, therefore a siren activated gate must be installed at this location complying with the requirements found in the NYC Fire Code section 503.2.8.1 # 6

There must be an agreement in place with the homeowners association of Denise Court that parking must be restricted on one side of Denise Court from the intersection of Arbutus Avenue and Denise Court until the entry roadway for dedicated emergency access. This agreement must be in place for this approval to be valid

A sign must be posted at the siren activated gate location which states: EMERGENCY VEHICLE ACCESS ONLY

A sign must be posted at the intersection of Arbutus Avenue and Denise Court which states: FDNY dedicated emergency access road to Santina Drive Development

FDNY also states that in addition to filing with the Fire Department, the applicant is also required to call the FDNY Bureau of Facilities Management, Plant Operations Engineering Office to schedule an appointment to evaluate the plans for any municipal fire alarm box requirements. FDNY states that 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. FDNY adds that if no boxes exist within 1000 feet of the site, the applicant should indicate all utility poles

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with their I.D. numbers. FDNY states that it is understood that all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Codes must be complied with by the applicant.

In response to revised plans submitted by the applicant, discussed below, the Fire Department supplemented its letter, on May 6, 2022, and states the following: “The Fire Department, Bureau of Operations, and Fire Prevention have reviewed the site plans (BSA-100.00, BSA-101.00, BSA-102.00, BSA-103.00, BSA-104.00, BSA-105.00, and BSA-106.00, dated February 26, 2022) for the above-referenced project and have no further objections. A waiver request is granted for the code requirements as stated in the NYC Fire Code Section 503.2.3.2: “where access is being provided to not more than 5 dwelling units a fire apparatus access road shall have unobstructed width of not less than 30 feet.” This letter supersedes the Fire Department’s letter and attached plan of November 12, 2019, and Fire Department’s approval plan dated February 25, 2021, for this application. The applicant has provided two means of unobstructed access, one via a 15'-0" wide portion of the existing roadway (Denise Court) used for emergency vehicle access, and the second via a 30-foot wide private street (Santina Drive) as shown on plan BSA-105.00, dated February 26, 2022, both roadways of which shall have parking restricted on the eastside portion; a standard width street of 34 feet with parking permitted on both sides would provide considerably less drivable street space. Therefore, the Fire Department is granting a waiver of NYC Fire Code 2014 Section 503.2.3.2. The conditions of this waiver are as follows:

All proposed units must be fully sprinklered.

A restrictive declaration agreement must be in place, submitted with this approval to the Department of Buildings permanent files which prohibits any obstructions along a 15'-0" wide portion of Denise Court from the intersection of Arbutus Avenue to the intersection of the Fire Apparatus Access Road portion of Santina Drive. See plan BSA-105.00 and BSA-106.00 for a list of easements filed for this development. The location and requirements have been incorporated into further detail as shown in the revised plans listed above, as submitted to the Board of Standards and Appeals.

There must be “NO STANDING” throughout the eastside portion of the 30-foot-wide section of Santina Drive from where Santina Drive intersects with Arbutus Avenue to the existing eastern side turn-around. This portion of the street must have signage as required by the 2014 NYC Fire Code and pavement markings along the eastside of the street with diagonal striping and staking: “NO STANDING FIRE ZONE.”

The proposed western side turn-around and 20'-0" wide Fire Apparatus Access Road, which extends Santina Drive to the intersecting street of Denise Court must have “NO STANDING” throughout

signs posted. This portion of Santina Drive is a dedicated secondary fire apparatus access road, all vehicular traffic is prohibited from parking or obstructing this road except for emergency vehicles. A siren-activated gate must be installed at this location complying with the requirements found in the 2014 NYC Fire Code Section 503.2.8.1 item #6. See plan BSA-100.00 and BSA-103.00.

A sign must be posted at the intersection of Arbutus Avenue and Denise Court which states: “FDNY emergency access road to Santina Drive Development.”

In addition to filing with this office, [the applicant is] also required to call the Bureau of Facilities Management, Plant Operations Engineering office at (718) 281-3933, 3846, to schedule an appointment to evaluate [] plans for any municipal fire alarm box requirements. To expedite their review, please 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 1000 feet of the site, please indicate all utility poles with their identification numbers. It is understood that all legal requirements, including those outlined in the 2014 New York City Fire Code and the New York City Construction Codes must be complied with by the applicant.”

V.

In response to Board, community, DCP, and FDNY concerns over circulation, density, and emergency access, the applicant reduced the proposal from 23 two-family residences to 19 single-family residences, resulting in a reduction of 27 dwelling units, and provided updated plans and designs to reflect the changes. To support its position that 19 single-family residences reflected the appropriate density for the Premises and its access route, at the Board’s request, the applicant prepared several studies showing typical development densities in the immediate area and notably those relying on access roadways of substandard width. Among the developments studied were those located at Denise Court, Arbutus Way, Gallant Loop, Christine Court, Rose Lane, Eugene Place, Louise Street, and Serena Court. These studies demonstrated that where substandard access roads were 30 feet or less in width, most developments had been constructed in the 1980s or earlier, with the majority of such homes as single family, and lot size reliant on whether sanitary sewer connections were available. Where such sewer connections were possible, lot sizes comply with underlying zoning minimums. However, the survey revealed that the majority of recent developments have lot sizes of 50 feet wide by 100 feet deep. The applicant also studied the Large Lot Area subdistrict (LL) of the SSRDD, Z.R. § 107-42 fn. 2, which limits development to a minimum lot area of 5,700 square feet and a minimum lot width of 50 feet, and, although the Premises is not in the Area LL subdistrict, the applicant used these regulations as a design tool. Based on these studies, the applicant concluded, and the Board agreed, that the maximum appropriate density on the Premises, considering the access

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roadway limitation, is 19 single-family residences with 50 feet fronting on the prolongation of Santina Drive, resulting in lot areas in excess of 6,400 square feet.

In addition, following discussion at hearing about the potential to increase the width of sections of existing Santina Drive that are not constricted by the width of lot 60, which lot is occupied by an existing residence held by an owner who is not a party to the proposed development on the Premises, the applicant modified the site plan, showing a widening to 34 feet of the roadway at that portion of Santina Drive beginning at a point distant approximately 232 feet from the intersection of Arbutus Avenue and Santina Drive and continuing to the beginning of the approximately 70 foot diameter existing Santina Drive roundabout located in front of lots 58 and 59. A sidewalk was added to the westside portion of the enlarged roadway terminating at lot 60.

With respect to the access roadways and concerns about their maintenance, initially, the applicant represented that the existing three homeowners whose residences located on tax lots 58, 59, and 60, at Block 6517, and which rely for access on the existing portion of Santina Drive, have an existing HOA agreement that would be kept separate from the new proposed HOA agreement that would apply only to the owners of the new homes to be developed on the Premises located on current lot 100.

After the Board expressed its concerns regarding the confusion and complexity this system could create, the applicant combined the original Declaration of Street Easement by Rubicon SGA, LLC, dated May 12, 2017, recorded at Land Doc # 653993, Grant of Easement for Ingress, Egress, Road Maintenance and Utilities, by Santom SGA, LLC et al., dated May 12, 2017, recorded at Land Doc # 653992, and Declaration of Covenant, Restrictions, Easements, Charges and Liens, by R. Santimauro, et al., dated June 25, 1988, recorded at reel 1460, page 279, and First Amendment to Declaration for the Arbutus Avenue Homeowner's Association, by Santom SGA, LLC et al., dated May 12, 2017, recorded at Land Doc # 653994 (the "Existing HOA Documents") into one document, a restrictive declaration, the First Amended and Restated Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens, (the "GCL 36 Restrictive Declaration"), by Arbutus Avenue Homeowners Association, Santom SGA, LLC et al., dated September 20, 2021, recorded at Land Doc # 852166, which includes all necessary provisions of the entire development, including the existing three residences, as well as additional sections to address the Board's concerns.

The applicant represents that the reduction from 46 to 19 dwellings is a 59% reduction in the proposed density. The proposed units will be compliant with underlying bulk regulations, and each will contain a one-car garage and two additional off-street parking spaces in the side yard. The applicant represents that this reduced proposal reduces traffic on the proposed private roadway and provides for safer and more effective emergency service access.

A.

The applicant states that the proposed subdivision plan complies with Fire Department access and hydrant requirements and included in the FDNY approval is the granting of a waiver of Fire Code Section 503.2.3.2 permitting the existing portion of the Santina Drive roadway width of 30' to remain with the mitigation requirements contained in the FDNY approval. The Applicant further states that the FDNY approvals, together, demonstrate that access to the proposed new 19-unit housing development via the existing portion of Santina Drive and along the prolongation of Santina Drive, with FDNY's directed mitigation measures, is adequate for emergency vehicles and homeowners and is consistent with creating a safe and well-planned road network. Striping and road signs are added to regulate the use of Santina Drive and are shown on the revised site plan in accordance with the FDNY approval. The site plan also provides for a dedicated fire apparatus access road ("F.A.A.R.") of 15'-width along the eastern side of Denise Court, a private roadway in connection with which the Premises benefits from an easement for ingress/egress to Arbutus Avenue, on which "no parking or standing is permitted on the easterly side of said Easement for a width of 15 feet for the purpose of keeping the Easement unobstructed for the benefit" of the owner of the Premises. *See* Declaration, by Rubicon, SGA LLC, dated March 19, 2020, and recorded at Land Doc # 776216, Easement by B.B.D. Construction and Palomba, dated September 1984, and recorded at reel 39, page 4478, and Deed to Palomba, dated March 23, 1983, and recorded at reel 12, page 9746.

FDNY has directed in its approvals that the F.A.A.R. is only for emergency services and not to be used by residents of the proposed development on the Premises. The existing private road portion of Santina Drive cannot be widened to 34' as the existing Santina Drive road width beginning at its intersection with Arbutus Avenue is less than 34' and widening is constricted by the existing house on lot 60. To mitigate this condition, no standing is to be permitted on the eastside portion of the private road, creating a clear road width of 21', which is greater than the regulation of 18' created by a 34'-wide roadway.

The Denise Court easement, which will be used for the emergency F.A.A.R. access per FDNY requirements, is already indicated on the recorded document as being open and accessible to all parties. Denise Court currently provides access as does any private road. However, the FDNY requirements specify that a restrictive declaration be recorded to reflect the parking restriction on the east side of Denise Court and bind all who use the roadway. Specifically, the restrictive declaration and plans provide protection for the entire length of Denise Court, from the Santina Drive Emergency Access Road to Arbutus Avenue and projecting eastward 15 feet from the centerline of Denise Court and prohibiting parking on the eastside portion of Denise Court but permitting parking on the westside of Denise Court. Signs have been shown on the revised site plan in conformance with the FDNY approval.

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B.

The applicant recorded the GCL 36 Restrictive Declaration, dated September 20, 2021, recorded at Land Doc # 852166, which includes maintenance and repair commitments by the HOA. Specifically, these declarations include that:

Maintenance and Repair by the Association: The Association shall be responsible at its cost and expense for the maintenance, repair and replacement of (a) the Roadway, including required snow removal and paving or striping as the Board [of the HOA] deems appropriate, (b) the F.A.A.R. [(Fire Apparatus Access Road)] and any emergency access gate thereto, (c) street lighting (electrical meters serving same), poles and fire hydrants, and (d) the public or private utility lines, wires, pipes, conduits, and connections for, without limitation, water, electric, television, data, fire alarm, telephone, gas, sewers, drywells, drainage systems, and appurtenances to be used in common by more than one of the Units.

Repairs and Maintenance Which Are Not the Responsibility of the Association: Except for the maintenance and repair obligations of the Association set forth in [Maintenance and Repair by the Association], it shall be the responsibility of the Owner of each Lot to maintain and repair, at the Owner's cost and expense, any and all improvements located on their Lot which shall include, without limitation, the obligation to maintain, repair and replace sidewalks (including the removal of snow and ice) and curbs for the entire length of the Lot abutting the Roadway; water, sewer or utility lines located upon their Lot that are not used in common by any other Lot; landscaping, and street trees located between the curbs and sidewalks within the bounds of an Owner's Lot. The foregoing maintenance obligations shall be the obligation of the Owner of each Lot notwithstanding the fact that such elements may be defined as a Common Facility. Landscaping shall refer to all required planting in the development. (b) Any maintenance, repair or replacement necessary to preserve the appearance and value of the property made pursuant to [Maintenance and Repair by the Association] above but which is occasioned by a negligent or willful act or omission of an Owner (including (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) shall be made at the cost and expense of such Owner. (c) The Association shall have the right but not the obligation to perform any obligation belonging to an Owner,

the cost of which when performed by the Association shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost shall be added to the Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Unit or Lot, as the case may be, to secure the payment thereof.

Quality and Frequency of Maintenance and Repairs: All maintenance, repair and replacement, whether performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. All landscaping shall be installed, as required, maintained, and replaced as necessary to be maintained in first class condition at all times. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of property which it is obligated to maintain, repair or replace pursuant to Section [Maintenance and Repair by the Association], which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of the Property.

The Board is relying on the applicant's representation that the land survey, dated March 5, 2021, prepared by Wohl & O'Mara, LLP, accurately represents the Premises, access roadways, and easements as well as the location of wetlands and adjacent areas and that development of the Premises will not occur on any areas that are protected by the Department of Environmental Conservation.

Accordingly, 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 April 20, 2018, acting on New Building Application Nos. 520290140, 520303680, 520303742, 520303788, 520332266, 520322990, 520332195, 520323409, 520332211, 520323445, 520319888, 520323436, 520323463, 520323418, 520319913, 520322954, 520322963, 520322972, and 520322927, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of 19 single-family residential buildings that do not front on a mapped street; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Board Approved: May 23, 2022"—Seven (7) sheets; and *on further condition*:

THAT prior to the issuance of any permits for construction of any improvements on the subject property, a performance bond required in accordance with GCL § 36(2) shall be provided to the Department of Transportation for the portion of the roadway within the right of way of

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Arbutus Avenue;

THAT a policy of liability insurance in accordance with GCL § 36(2) shall be submitted to the Department of Transportation guaranteeing improvement and maintenance of the portion of the roadway within the right of way of Arbutus Avenue;

THAT all proposed units shall be fully sprinklered;

THAT a restrictive declaration agreement shall be in place, submitted with this approval to the Department of Buildings permanent files which prohibits any obstructions along a 15'-0" wide portion of Denise Court from the intersection of Arbutus Avenue to the intersection of the Fire Apparatus Access Road portion of Santina Drive (See plan BSA-105.00 and BSA-106.00 for a list of easements filed for this development);

THAT there shall be "NO STANDING" throughout the eastside portion of the 30-foot-wide section of Santina Drive from where Santina Drive intersects with Arbutus Avenue to the existing eastern side turn-around. This portion of the street shall have signage as required by the 2014 NYC Fire Code and pavement markings along the eastside of the street with diagonal striping and stating: "NO STANDING FIRE ZONE";

THAT the proposed western side turn-around and 20'-0" wide Fire Apparatus Access Road, which extends Santina Drive to the intersecting street of Denise Court shall have "NO STANDING" throughout signs posted. This portion of Santina Drive is a dedicated secondary fire apparatus access road, all vehicular traffic is prohibited from parking or obstructing this road except for emergency vehicles. A siren-activated gate shall be installed at this location complying with the requirements found in the 2014 NYC Fire Code Section 503.2.8.1 item #6 (See plan BSA-100.00 and BSA-103.00);

THAT a sign shall be posted at the intersection of Arbutus Avenue and Denise Court which states: "FDNY emergency access road to Santina Drive Development."

THAT the restrictive declaration can be amended by FDNY request by letter of substantial compliance;

THAT the Department of Environmental Protection must approve the sanitary sewer connection;

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. Nos. 2018-70-A through 2018-86-A, 2018-89-A & 2018-90-A"), shall be obtained;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations, except for the existing portion of Santina Drive as indicated on the BSA-approved plans, as if the unimproved street were 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 23, 2022.

170-93-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for JABE Contracting LLC, owner.

SUBJECT – Application August 25, 2020 – Proposed enlargement of a commercial building not fronting on a legally mapped street, contrary to General City Law §36. M3-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 220 Industrial Loop, Block 7206, Lot 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10:00 A.M. for decision, hearing closed.

2018-68-A, 2018-69-A, 2018-87-A, 2018-88-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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10:00 A.M. for decision, hearing closed.

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2018-188-A & 2018-189-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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10:00 A.M. for adjourned hearing.

2019-96-A thru 2019-155-A

APPLICANT – Rampulla Associates Architects, LLP, for ELOC FTK, LLC, owner.

SUBJECT – Application May 23, 2019– Application to permit the construction of 48 two family and single family homes not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District.

REMISES AFFECTED – Cole Street, Bluebelt Loop, Lookout Lane, Block 7558, Lot 65; Block 7564, Lot(s) 0,86; Block 7566; Block 7562, Lot(s) 1, 11, 16 thru 53, 190, 193, 91, 92, 84 thru 111, and 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10:00 A.M. for postponed hearing.

ZONING CALENDAR

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – 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.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated June 9, 2020, acting on Application Type Alteration 1

No. 321909681, reads in pertinent part:

Proposed eight (8) story and cellar residential building located in R7A district is non-compliant in regard to: Proposed rear yard contrary to minimum yard requirements of ZR 23-47 and must be referred to the Board of Standards and Appeals for a variance pursuant to ZR 72-21.

This is an application for a variance, pursuant Z.R. § 72-21, to permit, in a R7A zoning district, the construction of an eight-story, plus cellar, residential building contrary to rear yard regulations (Z.R. § 23-47).

A public hearing was held on this application on March 23, 2021, after due notice by publication in *The City Record*, and then to decision on May 23, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and the surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board received one letter of objection citing concerns over loss of light, air, and quiet enjoyment.

II.

The Premises are located on the west side of East 19th Street, between Avenue L and Avenue M, within an R7A zoning district, in Brooklyn. With approximately 41 feet of frontage along East 19th Street, 149 feet of depth, and 7,047 square feet of lot area, the Premises are currently occupied by a one-story, single-family residence.

The applicant proposed to construct an eight-story, plus cellar, residential building with 31 dwelling units and approximately 26,925 square feet (4.0 FAR) of floor area. The applicant represented that the cellar (approximately 2,135 exempt square feet) would contain storage and utility spaces; the first floor (approximately 2,752 square feet) would contain three residential units and the entrance lobby for the building; the second through sixth floors (approximately 3,573 square feet) and seventh through eighth floors (approximately 3,155 square feet) would contain four dwelling units each. The applicant requests relief from the Board as the proposed residence would not provide the required rear yard. In the subject zoning district, Z.R. § 23-47 requires a minimum depth of 30 feet for the rear yard.

Z.R. § 12-10 defined a rear lot line as “any lot line of a zoning lot except a front lot line, which is parallel or within 45 degrees of being parallel to, and does not intersect, any street line bounding such zoning lot.” The applicant claims that due to the angled orientation and irregular shape of the subject lot, the southwestern lot line of the subject lot is rear lot line. The applicant further states that the southwestern lot line of the subject lot is 37 degrees of being parallel to the street line of East 19th Street and does not intersect the street line.

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.

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A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the rear yard created due to lot orientation and shape—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 states that the wider rear portion of the lot and in conjunction with the angle of intersection with East 19th Street result in the rear lot line and required rear yard preventing permitted development of a majority of the lot area on the southwestern portion of the subject lot. The applicant contends that such a required rear lot line would restrict the development of the subject site to building ranging from 12 feet 1/2 inches to 17 feet 1/4 inches in width.

In support of this contention, the applicant submitted a radius diagram which it contends demonstrates that the subject lot is the only lot on the subject block and vicinity that has a flag configuration, resulting in the rear yard condition affecting the Premises whereas other lots have equal frontage and width.

B.

Next, the applicant submits that in the absence of the grant of the variance requested in this application, it would not be possible for the subject Premises to provide a reasonable return on investment. In support of this contention, the applicant submitted a Financial Feasibility Study, which states that the expected return on the as-of-right development of a six-story residential building would yield a -56.6% return as a percentage of cost. The applicant further declares that, in contrast, the development of Premises with the proposed eight-story residential building would allow for a +0.1% return as a percentage of cost.

C.

The applicant further 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 the proposed residence is on and adjacent to blocks developed primarily with residential uses, with some mixed-use buildings (residential and commercial) on Avenue M to the south. The applicant further states that the majority of the residential buildings in the area are developed with multi-story multiple dwellings, including the immediately adjacent lots to the south, which has an eight-story, multiple dwelling residence, and the north, which has a six-story, multiple dwelling residence.

Additionally, the applicant described that the proposed building as oriented on the subject lot to create minimal impact on adjacent buildings with an eight-foot required side yard proposed at the northern lot line while the existing building to the south has no windows on the north side of the building, allowing for a lot line construction. The applicant states that to the west of the subject lot, there is a minimum of 60 feet between the proposed building and the existing residence.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises due to the physical conditions of the subject lot which existed prior to December 15, 1961 and created prior to the City of New York's transfer of title to private ownership.

E.

The applicant notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that the requested bulk waiver of the rear yard requirement within the R7A zoning district is the minimum necessary to afford relief, and without the requested relief, the owner would not be able to develop the site with a feasible structure due to the unique conditions affecting the site.

IV.

By letter dated January 22, 2021, the New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (“DEP”) has reviewed the Air Quality chapter of the December 3, 2020 Environmental Assessment Statement (“EAS”) and support materials. Based on the assessment and the conditions associated with the proposed project, the proposed would not have potential significant adverse mobile or stationary source air quality impacts. A mobile source screening analysis was performed for the proposed action. The peak hour traffic and peak hour heavy-duty diesel vehicles (“HDDV”) passed CO and PM_{2.5} screening analyses. A stationary source analysis was performed for the HVAC system of the proposed project. The proposed action passed the HVAC screening analysis.

By correspondence dated January 12, 2021, the NYC Department of Parks and Recreation states that it has reviewed the Shadows Chapter of the applicant's EAS and has no comments.

V.

At hearing, the Board expressed concerns that the applicant had not met the threshold questions to be eligible for a variance pursuant to Z.R. § 72-21. To begin, the Board stated that the zoning lot is unique but that it did not agree with the applicant's analysis of the lot line. The Board found that the subject site meets the description of a flag lot and the regulations for such sites as described under Z.R. §§ 23-543(c) and 23-471, which state, “In R6 through R10 districts, no rear yard shall be required where such rear lot line coincides with a side lot line of an adjoining site.” The Board stated that the rear lot line at the subject site, which is determined by extending the lot line until it intersects with the street and calculating the angle at that intersection, cannot be identified at the subject site from the applicant's submitted site plan.

The Board directed the applicant to seek a Zoning Resolution Determination (“ZRD1”) from DOB which would permit the proposed project to continue as of right. Additionally, the Board questioned if the application should

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have been filed under Z.R. § 73-69 instead. Z.R. § 73-69 allows the Board to permit modifications to rear yards, provided the following findings are made:

- (a) that due to the irregular shape of the zoning lot, compliance with the rear yard regulations would create site planning constraints and adversely affect the layout and development of the site; and
- (b) That the requested reduction in rear yard depth is the least amount necessary to grant relief.

Even for a variance application under Z.R. § 72-21, the Board stated that it did not agree with the applicant's arguments. For example, the Board disagreed with the applicant's assertion that the proposed residence required a side yard with a minimum depth of eight feet, and cited Z.R. § 23-464(b), which states that in R6 through R10 zoning districts, no side yards are required unless any open area extending along a side lot line is provided at any level, which shall be at least eight feet wide.

The Board declared that the applicant could construct up to the side lot line and develop the proposed project as of right. The Board calculated that by building the proposed project to the lot line the applicant could construct a 50 by 56.7 plus 25 by 70-foot section which adds up to a residence with a 4,600 square foot floor plate and is larger than the applicant's proposed 12-foot-wide strip house.

Furthermore, the Board did not agree with the correctness or thoroughness of the applicant's complained of hardship, its as-of-right plans, or its site plans. As per the hardship, the Board stated that because the lot measures approximately 148 feet long at its shortest part, and the applicant could build until the rear lot line up to 25 feet, the resultant building would be a long, narrow building common in New York City. The Board specified that the submitted site and as-of-right plans needed to be revised to show resulting layouts and to justify the costs in the financial analysis.

As to the applicant's Z.R. 72-21(d) argument, the Board stated that the application obfuscated issues at the subject site as the application did not contain a substantive discussion for this finding. The Board pointed out how the applicant provided a deed of the subject lot when it should have included a search of all the deeds of the adjacent lots since 1961 to determine whether they were held in common with the subject lot. As a result of its own research, the Board discovered a 2017 deed shows that the subject lot and lot 33 were conveyed to the owner of the subject lot, which was not mentioned in the submission and further cuts against the Z.R. 72-21 (d) finding. Furthermore, the Board discovered that the subject lot and the adjacent lot 71 were subdivided and sold to separate purchasers in 1966, thereby creating the main difficulty complained of in the application. The Board directed the applicant to address whether or not without this subdivision, the hardship complained of would still exist and the requested waiver would still be necessary. Moreover, the Board found that there were several recordings against the subject lot such as

zoning lot development agreements and an easement at the side lot line which were not explained in the submission.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated May 18, 2022, 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, May 23, 2022.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§ 72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – 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.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

MINUTES

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – 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.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 4-5, 2022, at 10 A.M., for a adjourned hearing.

2021-29-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joselito Lopez, owner.

SUBJECT – Application May 3, 2021 – Variance (§72-21) to permit the construction of a two-story, two-family residential building that does not provide one required front yard contrary to ZR §23-45. R4A zoning district.

PREMISES AFFECTED – 3904 Orloff Avenue, Block 3263, Lot 195, Borough of Bronx.

COMMUNITY BOARD #8BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10:00 A.M. for decision, hearing closed.

2021-56-BZ

APPLICANT – Sheldon Lobel, P.C., for 341-353 39th Street LLC, owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Prospect Charter School) contrary to ZR §42-00. M1-2 zoning district.

PREMISES AFFECTED – 341 39th Street, Block 704, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10:00 A.M. for decision, hearing closed.

PUBLIC HEARINGS MONDAY-TUESDAY, MAY 23-24, 2022 2:00 P.M.

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

ZONING CALENDAR

2020-74-BZ

APPLICANT – Nasir J. Khanzada, for Arline R. Mallinson, owner; Jagjit Singh, lessee.

SUBJECT – Application September 16, 2020 – 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.

PREMISES AFFECTED – 1500 Williamsbridge Road, Block 4082, Lot 5, Borough of Bronx.

COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10:00 A.M. for decision, hearing closed.

2022-10-BZ

APPLICANT – Sherry and O’Neill, for RFR/K 55 Prospect Owner LLC, owner; Vivvi, Inc., lessee.

SUBJECT – Application February 4, 2022 – Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (Vivvi) contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10:00 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Volume 107, Nos. 24-25

June 17, 2022

DIRECTORY

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DARA OTTLEY-BROWN

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HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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581-56-BZ	24-01 to 24-11 36th Avenue, Queens
490-72-BZ	4200 Baychester Avenue, Bronx
6-14-BZ	2525 Victory Boulevard, Staten Island
1254-80-BZ	511 Avenue R, Brooklyn
853-53-BZ	2402/16 Knapp Street, Brooklyn
663-63-BZ	46 10th Street, Staten Island
584-82-BZ	200 East 64 th Street, Manhattan
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2022-31-BZ

337 East 64th Street, Block 1439, Lot(s) 0019, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the conversion and enlargement of an existing building to facilitate a UG 3 school (The Browning School) contrary to underlying rear yard and height regulation. C2-5/R8B zoning district. R8B with C2-5 Overlay district.

2022-32-BZ

474 Oakdale Street, Block 5328, Lot(s) 0037, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit in the construction of a cellar and two-story, one-family residential building that does not provide a required front yard pursuant to ZR § 23-45 and a required rear yard pursuant to ZR § 23-47. R1-2 zoning district R1-2 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, AUGUST 8-9, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, August 8, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday, August 9, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe La Sorsa, owner.

SUBJECT – Application October 4, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2022. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415/17 East 92nd Street, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

2016-4176-BZ

APPLICANT – Akerman LLP, for Islamic Center of Jackson Heights, owner.

SUBJECT – Application November 18, 2021 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR §24-34 (front yard) and ZR §24-35 (side yard) requirements, which expired on October 3, 2021. R4 zoning district.

PREMISES AFFECTED – 78-04 31st Avenue, Block 1149, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEALS CALENDAR

2021-79-A

APPLICANT – Sheldon Lobel, P.C., for 38-60 Hotel, LLC, owner.

SUBJECT – Application November 22, 2021 – Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-3 zoning district.

PREMISES AFFECTED – 38-60 11th Street, Block 474, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

2021-81-BZY

APPLICANT – Sheldon Lobel, P.C., for 38-60 Hotel, LLC, owner.

SUBJECT – Application November 22, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-60 11th Street, Block 474, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

2022-1-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for JLAM Management LLC, owner.

SUBJECT – Application August 8, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district

PREMISES AFFECTED – 1227 Broadway, Block 831, Lot 68, Borough of Manhattan.

COMMUNITY BOARD #5M

ZONING CALENDAR

2021-55-BZ

APPLICANT – Eric Palatnik, P.C., for H & Z Building Corp., owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district.

PREMISES AFFECTED – 134-16 35th Avenue, Block 4958, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

2021-61-BZ

APPLICANT – Eric Palatnik, P.C., for Eduard Magidov, owner.

SUBJECT – Application September 16, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R3-1 zoning district.

PREMISES AFFECTED – 2021-61-BZ, 4080 Ocean Avenue, Block 8731, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

2021-69-BZ

APPLICANT – Eric Palatnik, P.C., for IVY CIP LAND HOLDINGS, LLC, owner.

SUBJECT – Application October 29, 2021 – Special Permit (§73-243) to permit an accessory drive-through accessory to an Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-15. C1-3/R2 zoning district.

PREMISES AFFECTED – 240-10 Merrick Boulevard, Block 13204, Lot 97, Borough of Queens.

COMMUNITY BOARD #13Q

2021-70-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Rakhshan Lalehfar, owner.

SUBJECT – Application November 10, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family residence contrary to underlying bulk requirements. R2 zoning district.

PREMISES AFFECTED – 1206 East 21st Street, Block 7602, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Shampa Chanda, Vice-Chair/Commissioner

MINUTES

PUBLIC HEARINGS
MONDAY-TUESDAY, JUNE 6-7, 2022
10:00 A.M.

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

SPECIAL ORDER CALENDAR

197-08-BZ

APPLICANT – Law Office of Jay Goldstein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application June 9, 2021 – Extension of Time to Complete Construction and Extension of Time to Obtain a CO of a previously approved Variance (§ 72-21) to permit a four-story and penthouse residential building which expired on June 18, 2021. R4 district.

PREMISES AFFECTED – 341 Troy Avenue, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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 time to complete construction and obtain a certificate of occupancy pursuant to a variance, previously granted under Z.R. § 72-21, that permitted the development of a five-story, including penthouse, residential building and expired on June 18, 2021.

A public hearing was held on this application on May 23, 2022, after due notice by publication in *The City Record*, and then to decision on June 7, 2022. Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding area. The Board received one letter in opposition to this application raising concerns regarding the maintenance of the site.

The Premises are located on the northeast corner of Troy Avenue and Carroll Street, within an R4 zoning district, in Brooklyn. With approximately 116 feet of frontage along Troy Avenue, 139 feet of frontage along Carroll Street, and 16,114 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since March 16, 2010, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit a five-story, with penthouse, residential building with 34 dwelling units and 35 accessory parking spaces, contrary to Z.R. §§ 23-141, 23-462(a), 23-631(b), 23-22, and 23-45, on condition that the bulk parameters of the building be a maximum of five stories, including penthouse, a maximum of 34 dwelling units, a total height of 54'-6", a

street-wall height of 44'-6", a floor area of 48,342 square feet (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, a minimum of 35 parking spaces, all as illustrated on the Board-approved plans; the parking layout be as approved by the Department of Buildings; no temporary or permanent certificate of occupancy be issued by the Department of Buildings or accepted by the applicant or successor until the Department of Environmental Protection issues a Notice of Satisfaction; 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 be completed in accordance with Z.R. § 72-23; 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 June 18, 2013, under the subject calendar number, the Board amended the variance to allow for the reduction in the number of dwelling units from 34 to 26 and the number of parking spaces from 35 to 32 and the associated redesign of the Premises.

By letters dated July 14, 2016, under the subject calendar number, the Board permitted minor changes to the Board-approved plans to allow for better vehicle maneuvering and ease maintenance of the building's mechanicals, and stated no objection to the portrayal of yards on the Board-approved plans or to the use of Quality Housing deductions to achieve deductions shown on the Board-approved plans.

On March 6, 2018, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the time to complete construction for four years, to June 18, 2021, on further condition that the bulk parameters of the building be as follows: a maximum of five stories, including penthouse, a maximum of 26 dwelling units, a total height of 54'-6", a street wall height of 44'-6", a floor area of 48,342 square feet (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, a minimum of 32 parking spaces, all as illustrated on the Board-approved plans; the parking layout be as approved by the Department of Buildings; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by June 18, 2021; and, all conditions from prior resolutions not specifically waived by the Board remain in effect.

The time to have completed construction and obtained a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that since the Board's most recent approval, project financing issues and constraints related to the global COVID-19 health pandemic have resulted. The applicant states that, in spite of these issues, construction at the Premises is ready to proceed and the

MINUTES

applicant anticipates four years to complete construction. Specifically, the applicant anticipates to complete application review and job permitting within seven months, excavation and foundation work within six months thereafter, seven months to construct the superstructure, and complete construction and obtain a certificate of occupancy within one year thereafter. In response to Board and community concerns regarding maintenance of the Premises, the applicant submitted photographs demonstrating the Premises has been cleaned and cleared of debris.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and 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, dated March 16, 2010, as amended through March 6, 2018, so that as amended this portion of the resolution shall read: “to extend the time to complete construction and obtain a certificate of occupancy for four years, to June 7, 2026, *on condition*:

THAT substantial construction shall be completed by June 7, 2026;

THAT the bulk parameters of the building shall be as follows: a maximum of five stories, including penthouse, a maximum of 26 dwelling units, a total height of 54'-6", a street wall height of 44'-6", a floor area of 48,342 square feet (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, a minimum of 32 parking spaces, all as illustrated on the Board-approved plans;

THAT the Premises shall be maintained rodent-free at all times;

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

THAT no temporary or permanent certificate of occupancy be issued by the Department of Buildings or accepted by the applicant or successor until the Department of Environmental Protection issues a Notice of Satisfaction;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 197-08-BZ”), shall be obtained within four years, by June 7, 2026;

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

7, 2022.

55-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yeshivas Novominsk, owner.

SUBJECT – Application October 1, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a proposed enlargement of an existing dormitory accessory to an existing school (*Yeshivas Novominsk*) which expires on December 10, 2021. R5 zoning district.

PREMISES AFFECTED – 1690 60th Street, Block 5517, Lot 39, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a variance, previously granted under Z.R. § 72-21, that permitted the enlargement of an existing community facility building occupied as a school and expired on December 10, 2021.

A public hearing was held on this application on May 23, 2022, after due notice by publication in *The City Record*, and then to decision on June 7, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The Premises are bounded by 60th Street to the north, 17th Avenue to the east, and 61st Street to the south, within an R5 zoning district, in Brooklyn. With approximately 140 feet of frontage along 60th Street, 200 feet of frontage along 17th Avenue, 150 feet of frontage along 61st Street, and 29,000 square feet of lot area, the Premises are currently occupied by an existing three-story and mezzanine community facility building.

The Board has exercised jurisdiction over the Premises since December 10, 2013, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit a two-story enlargement of a three-story, with mezzanine, community-facility building occupied as a school in Use Group 3 that does not comply with district regulations for floor area, wall height, sky-exposure plane, and side-yard setback, contrary to Z.R. §§ 24-11, 24-521, and 24-551 on condition that the building parameters be a floor area of 65,799 square feet (2.27 FAR), a maximum wall height of 58'-6" and five stories, that any change in control or ownership of the building will require prior approval of the Board and that the above conditions be listed on the certificate of occupancy.

On March 6, 2018, under the subject calendar number, the Board amended the resolution to permit an extension of time to complete construction for four years, expiring

MINUTES

December 10, 2021, on further condition that all work and site conditions conform to the Board-approved plans; the building parameters be as follows: a floor area of 65,799 square feet (2.27 FAR), a maximum wall height of 58'-6" and five stories; any change in control or ownership of the building will require prior approval of the Board; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by December 10, 2021; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings must 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 have completed construction and obtained a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that since the Board's most recent approval, project financing issues and constraints related to the global COVID-19 health pandemic have resulted. The applicant states that, in spite of these issues, construction at the Premises is ready to proceed and the applicant anticipates approximately three years to complete construction. Specifically, the applicant anticipates to complete DOB review within 11 months, completion of the superstructure 11 months thereafter, and complete construction and obtain a certificate of occupancy approximately 13 months thereafter. Accordingly, the applicant seeks a four-year extension of time to complete construction and obtain a certificate of occupancy.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and 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, dated December 10, 2013, as amended through March 6, 2018, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, to June 7, 2026, *on condition*:

THAT substantial construction shall be completed by June 7, 2026;

THAT the building parameters shall be as follows: a floor area of 65,799 square feet (2.27 FAR), a maximum wall height of 58'-6" and five stories;

THAT any change in control or ownership of the building will require prior approval of the Board;

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

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

THAT a certificate of occupancy, also indicating this

approval and calendar number ("BSA Ca1. No. 55-13-BZ"), shall be obtained within four years, by June 7, 2026;

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 7, 2022.

6-14-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application March 10, 2021 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired on February 28, 2021. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, Block 1521, Lot 1, 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 –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a special permit, previously granted under Z.R. § 73-211, that permitted the operation of an automotive service station (Use Group 16B) with an accessory convenience store and expired on February 28, 2021.

A public hearing was held on this application on April 11, 2022, after due notice by publication in *The City Record*, and then to decision on June 6, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The Premises are bounded by Victory Boulevard to the south, Willowbrook Road to the east, and Montauk Place to the north, within an R3-2 (C2-1) zoning district, on Staten Island. With approximately 177 feet of frontage along Victory Boulevard, 103 feet of frontage along Willowbrook Road, 147 feet of frontage along Montauk Place, and 24,945 square feet of lot area, the Premises are currently under construction.

The Board has exercised jurisdiction over the Premises since June 25, 1957, when, under BSA Ca1. No. 719-56-BZ, the Board granted a variance to permit in a retail and

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residence use district the construction and maintenance of a gasoline service station with an accessory building and accessory uses including office, sales, a non-automatic car wash, minor repairs and lubrication with curb cuts and a business entrance near a residence use district for a term of ten years, expiring June 25, 1967.

On June 25, 1957, under BSA Cal. No. 321-57-A, the Board granted an appeal pursuant to General City Law § 35 to permit the use of the portion of the Premises within the bed of Victory Boulevard to be used for entrance and exit to the Premises on condition that this portion of the Premises shall be paved, that no buildings or structures be erected thereon, and that when acquisition by the City of New York takes place, payment shall be determined by a court.

On April 21, 1987, under BSA Cal. No. 1096-86-A, the Board granted an appeal to permit the use of self-service gasoline pumps contrary to Administrative Code § 27-4081(b) under certain safeguards for a term of five years, which expired April 21, 1992.

The variance under BSA Cal. No. 719-56-BZ was amended and extended from time to time.

On February 10, 2009, under BSA Cal. No. 719-56-BZ, the Board granted an application to waive of its rules, to reopen and extend the term of the variance to April 27, 2017, and to extend the time to obtain a certificate of occupancy to November 10, 2009.

Under Z.R. § 11-412, an amendment to the existing variance was not permitted because the applicant proposed an enlargement in excess of 50 percent of the building and, on February 28, 2017, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-211, to permit the enlargement of an existing automotive service station (Use Group 16B) and conversion of the existing service bay to an accessory convenience store on a Premises located in an R3-2 (C2-1) zoning district on condition that all work substantially conform to drawings filed with the application; all garbage pickup at the Premises occur before 11 p.m.; the remediation equipment enclosure then on the Premises be removed from the upon completion of the remedial work; the portion of the Premises within the bed of a mapped street be paved; no buildings or structures be erected thereon; and when acquisition by the City of New York takes place, payment be determined by the Court; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years; 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 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 completed construction and obtained a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that the Premises is currently under construction. However, since the Board's most recent approval, construction delays have resulted due to issues with the site sewer connection and the COVID-19 global health pandemic. The applicant represents that all required permits have been obtained and anticipates sign-off within 4 to 6 months and obtaining a final certificate of occupancy 6 to 12 months thereafter. The applicant states that the Premises is proposed to operate as follows: gas filling services, with two employees per shift, 24 hours per day, 7 days a week; convenience store, with four employees per shift, 24 hours per day 7 days a week. Garbage collection is performed three times per week by typically in the midmorning hours. The remediation equipment has been removed and remediation is completed. The only underground storage tank ("UST") to be removed with the proposed construction work is a fuel oil UST located to the rear of the building; all other USTs are to remain. The site is still under construction and is being paved as required by the Board's conditions. New pedestrian ramps at the corner of Victory Boulevard and Willowbrook Road and a concrete curb wall adjacent to the southwest corner of the site are being installed to meet applicable NYC codes and maintain required grades. The applicant also proposes to update the wall sign to the permitted sign area, and update the layout of the floor and roof plans. Accordingly, the applicant seeks a four-year extension of time to complete construction and obtain a certificate of occupancy.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and 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, dated February 28, 2017, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, to June 7, 2026, *on condition*:

THAT substantial construction shall be completed by June 7, 2026;

THAT all garbage pickup at the Premises shall occur before 11:00 p.m.;

THAT the portion of the Premises within the bed of a mapped street shall be paved; no buildings or structures shall be erected thereon; and when acquisition by the City of New York takes place, payment shall be determined by the Court

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 6-14-BZ"), shall be obtained within four years, by June 7, 2026;

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

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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 6, 2022.

1254-80-BZ

APPLICANT – Jay Goldstein, Esq., for Sephardic Institute for Advanced Learning, owner.

SUBJECT – Application May 26, 2020 – Amendment of a previously approved Variance (§72-21) to permit the enlargement of a previously approved house of worship contrary to underlying bulk requirements. R6A, Special Ocean Parkway District.

PREMISES AFFECTED – 511 Avenue R, Block 394, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

853-53-BZ

APPLICANT – Eric Palatnik, P.C., 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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

663-63-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Dorp Baptiste Church, Inc., owner.

SUBJECT – Application July 26, 2019 – Amendment of previously approved Special Permits (§§73-452 & 73-641). The amendment seeks the proposed enlargement of an existing house of worship (UG 4) (New Dorp Baptist

Church) and school (UG 3) (New Dorp Baptist Academy). R3X zoning district.

PREMISES AFFECTED – 46 10th Street, Block 4220, Lot 0029, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

584-82-BZ

APPLICANT – Sheldon Lobel, P.C., for 64th Street Third Avenue Associates, LLC, owner.

SUBJECT – Application August 15, 2020 – Amendment of a previously approved Variance (§72-21) permitting the construction of a required plaza at a height in excess of 5 feet above the curb level. The seeks modifications to the layout of a Privately Owned Public Space (“POPS”). R8B and C1-9 zoning districts.

PREMISES AFFECTED – 200 East 64th Street, Block 1418, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

433-61-BZ

APPLICANT – Kenny Lee, AIA, for Shin J Yoo, owner.

SUBJECT – Application August 3, 2021 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations which expired on July 18, 2021: R7A zoning district.

PREMISES AFFECTED – 1702-1712 East 16th Street, Block 6798, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

268-03-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Park Circle Realty Associates, owner.

SUBJECT – Application October 13, 2021 – Extension of Term (§11-411) for the continued operation of an automotive service station which will expire on January 27, 2024; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 145-55 Guy Brewer Boulevard, Block 13313, Lot 40, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

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ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

2017-265-BZ & 2020-2-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application March 1, 2022– Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance and special permit permitting storage, warehouse and assembly of venetian blinds which expired on February 7, 2022. R6B zoning district.

PREMISES AFFECTED – 318-320 54th Street aka 5401 3rd 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2020-91-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Maple Towers LLC, owner.

SUBJECT – Application December 16, 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 cellar and four-story, eight-family residential building prior to the adaption of a zoning text amendment on September 14, 1989 when the zoning was R6. R5 zoning district.

PREMISES AFFECTED – 109-52 54th Avenue, Block 2010, Lot 24, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

2021-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Block 7206 Industrial LLC, owner.

SUBJECT – Application March 16, 2021– Proposed development of a two-story office and warehouse building (UG 6 & UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 500 Industrial Loop, Block 7206, Lot 86, Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for postponed hearing.

2021-24-A

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

SUBJECT – Application April 9, 2021– Proposed development of a one-story warehouse building (UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

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

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

2021-78-A

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

SUBJECT – Application November 22, 2021 – Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-2D zoning district.

PREMISES AFFECTED – 131 22nd Street, Block 642, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

2021-80-BZY

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

SUBJECT – Application November 22, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2D zoning district.

PREMISES AFFECTED – 131 22nd Street, Block 642, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

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2022-24-A

APPLICANT – Dominick Deangelis, RA, for Nina Kubota, President, owner.

SUBJECT – Application April 8, 2022 – Proposed development of a new 3-story NYC School Construction Authority (SCA) K-5 school building, P.S. 121, located on a site not fronting on a mapped street contrary to General City Law §36. R3A zoning district.

PREMISES AFFECTED – 4074 Victory Boulevard aka Shelley Avenue, Block 2629, Lot(s) 1, 20, 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2021-29-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joselito Lopez, owner.

SUBJECT – Application May 3, 2021 – Variance (§72-21) to permit the construction of a two-story, two-family residential building that does not provide one required front yard contrary to ZR §23-45. R4A zoning district.

PREMISES AFFECTED – 3904 Orloff Avenue, Block 3263, Lot 195, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 1, 2021, acting on New Building Application No. 240301259, reads in pertinent part:

“Proposed new building not in compliance with ZR 23-45(a). The front yard is required to be 10 feet or to match the adjacent building. Board of Standards and Appeals approval required.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R4A zoning district, the construction of a two-story, plus cellar, two-family residence that does not provide one required front yard, contrary to Z.R. § 23-45.

A public hearing was held on this application on March 29, 2022, after due notice by publication in *The City Record*, with a continued hearing on May 24, 2022, and then to decision on June 6, 2022. Community Board 8, Bronx, recommends approval of this application, on condition that:

- a) The proposed stairway from the cellar to the street be removed and no external public entranceway to the cellar be provided since it will encourage the creation of an illegal residence in the cellar and the conversion of the Premises to a multiple dwelling without compliance with the applicable provisions of law with respect thereto; and
- b) The 70 foot front yard façade fronting on Orloff Avenue be improved or reconfigured to be more in conformity with the existing single-family houses in the neighborhood possibly in terms of diversity of material, dimensions, variegation or any other element that can vary, diminish or relieve the extensive, massive and undifferentiated façade on Orloff Avenue that appears to the community to impact adversely on nature, character and residential design of the immediate neighborhood.

Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood.

I.

The Premises are a corner lot located at the northwest intersection of Orloff Avenue and Cannon Place, within an R4A zoning district, in the Bronx. With approximately 88 feet of frontage along Orloff Avenue, 37 feet of frontage along Cannon Place, and 2,413 square feet of lot area, the Premises are currently vacant.

II.

The applicant proposes to construct a two-story, plus cellar, two-family residence with a total floor area of approximately 2,108 square feet (0.87 FAR). The applicant represents that the first and second floor (approximately 1,054 square feet each) would be separate dwelling units with three bedrooms each, and the cellar (approximately 1,054 exempt) would be for storage and utilities. The applicant further states that a detached garage is proposed with the two required accessory parking spaces. The applicant seeks relief to not provide one of the required front yards for a corner lot in an R4A zoning district. Specifically, the applicant states that the front yard on Cannon Place measures 10 feet and would comply with the Zoning Resolution, if not for the lot line construction as proposed on Orloff Avenue, which would provide less than the 10 feet required.

In the subject R4A zoning district, for a corner lot, there is one required front yard, measuring a minimum of 10 feet or as deep as the adjacent front yards fronting on the same street, if the adjacent front yards measure greater than 10 feet, as per Z.R. § 23-45.4

III.

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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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the narrowness of the subject vacant zoning lot—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 provided a radius diagram, demonstrating that there are no other corner lots within 400 feet of the site (the “Study Area”). The diagram further posits that there is only one other vacant lot in the area, an interior lot that is in common ownership with an adjacent lot.

Additionally, the applicant submitted as-of-right plans which depict that development of the subject lot in strict conformance with the Zoning Resolution, which, due to the narrow width of the corner lot, would allow for a narrow building that would vary in width from 6'-5" at the northwest portion of the site to 9'-8" at the southeast portion of the site and, the applicant states, would be infeasible and uninhabitable. 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a two-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant represents that a grant of a bulk variance is necessary to enable the applicant to realize a reasonable return from the use of the subject Premises. The applicant argues that the narrow width, irregular shape, and corner lot location of the subject site would support a building that at its widest is less than 10 feet and prevent any feasible construction on the site.

C.

The applicant further 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. The applicant maintains that the proposed detached residence would be within the character of the surrounding area, as the proposed 0.87

FAR is significantly less than the maximum 1.02 FAR permitted within the R4A zoning district. The applicant also points to the submitted radius diagram, which demonstrates that the use of land near the subject site is nearly exclusively residential, including a mix of single-family residences and large multiple dwellings.

Moreover, the applicant submitted a corner lot study which demonstrates that within the proposed residence is in character with the existing buildings on the developed corner lots in the area. The study finds that the eight existing buildings in the study area range from 1,200 square feet to 4,743 square feet in floor area, with an average floor area of 3,174.25 square feet, whereas the proposed building would be 2,108.34 square feet. Furthermore, the study illustrates that the buildings in the area are primarily two stories as is the subject site. Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located; would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant states that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot which has resulted in a severely limited building area due to its narrow width, unusual shape, and corner lot location and not caused by the current owner or a predecessor in title. In support of this contention, the applicant submitted a title search which shows that the subject site had not been held in common ownership with an adjacent site since 1961. Additionally, the applicant provided a Bromley Land Map from 1960 which shows the subject site in the same 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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant reiterates that without the requested variance, the owner of the Premises would be unable to develop the site with a feasible structure. The applicant further states that, aside from the requested waiver, the proposed development would conform and comply with all applicable zoning regulations within the R4A zoning district. Accordingly, the

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Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

At hearings, the Board raised concerns regarding the applications Z.R. § 72-21 (a) and (e) findings. Specifically, with regard to the Z.R. § 72-21 (a) finding, the Board stated that the applicant should provide a uniqueness study to clarify its argument; indicate on its as-of-right plans the regulations for side yard, front yards and height regulations and cite to the proper provisions in the Zoning Resolution; and provide a site plan which has the relevant dimensions, distance of the proposed building from the property line, building sections, sidewalk conditions and dimensions on the adjacent properties, as the sidewalks need to line up, green space conditions, and base plane, defined as the level between the curb level and street wall line level. In regard to the Z.R. § 72-21(e) finding, the Board stated that the applicant should ground its argument in comparison to the surrounding sites and provide information as to whether the proposed project exceeds the average widths of buildings on corner lots or the average front yard on corner lots.

As to the proposed project, the Board also stated that the proposed dwelling units were basic with wasted space on circulation and proposed a redesign with the entrance in the middle of the building with the public area of the apartments to one side and the bedrooms to the other or a maisonette approach that splits the buildings into two parts as duplexes with cellar access to alleviate the concerns that the cellar would be used as an illegal unit and improve tenant access to the street and air access to the bedrooms. Additionally, the Board stated that the proposed drawings showed that the first floor is above grade and, thereby, not ADA accessible. Furthermore, the Board described the submitted drawings as inconsistent and should depict a brick building with stucco on masonry to ensure that the quality of construction is consistent with quality of the neighborhood.

In response to the concerns over the Z.R. § 72-21 findings, the applicant submitted a study of similarly situated corner lots in the vicinity of the subject site with information on building widths and front yards. Additionally, in response to the concerns about the proposed plans, the applicant submitted revised plans in which the building is extended to the lot line to increase the visual break on the Orloff Avenue frontage; dimensioned the side yard and base plane; updated the façade material note; corrected the height of the proposed building to cite to Z.R. §

23-631(b); and an updated zoning table to confirm floor area for both dwelling units. Moreover, the applicant clarified that the design of the proposed entrance with stairs was determined to be a superior option to a grade level entrance due to the significant slope of the subject site.

VI.

By correspondence dated May 24, 2022, the FDNY states that it supports the language that no living arrangement is permitted in the cellar.

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* the construction of a two-story, plus cellar, two-family, detached residence, contrary to Z.R. § 23-45; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: June 6, 2022”-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard on Orloff Avenue measuring 0'-0";

THAT the addition of a third dwelling unit shall void the variance;

THAT no occupancy shall be permitted within the cellar;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2021-29-BZ”), shall be obtained within four years, by June 6, 2026;

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 6, 2022.

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CORRECTION: This resolution adopted on June 6, 2022, under Calendar No. 2021-51-BZ, is hereby corrected to read as follows:

2021-51-BZ

APPLICANT – Akerman LLP, for 37 Ave Richouse LLC, owner.

SUBJECT – Application August 10, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21.C4-2 zoning district.

PREMISES AFFECTED – 133-25 37th Avenue, Block 4970, Lot (s) 11, 18, Borough of Queens.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated July 20, 2021, acting on New Building Application No. Q00523537-11, reads in pertinent part: “ZR 61-21 - The proposed building height exceeds the height limits established per ZR 61-21.”

This is an application for a special permit under Z.R. §§ 73-66 and 73-03 to permit, within a C4-2 zoning district, the development of an 17-story mixed-use commercial, community facility, and residential 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 March 15, 2022, after due notice by publication in *The City Record*, and then to decision on June 6, 2022. Commissioner Scibetta performed an inspection of the Premises and the surrounding neighborhood. Community Board 7, Queens, recommends approval of the application. The Board also received one form letter of support and two form letters of objection, citing concerns that the new building would block views of the surrounding area and overcrowding.

I.

The Premises are a through lot with frontage on the north side of 37th Avenue and the south side of 36th Road, within a C4-2 zoning district in Queens. With approximately 150 feet of frontage along 37th Avenue, 217 feet of frontage along 36th Road, 231 feet of depth, and 42,541 square feet of lot area, the Premises are currently vacant.

The applicant proposes to construct a 17-story mixed use commercial, community facility, and residential building, including a Use Group (“UG”) 5 transient hotel with 204,163 square feet of floor area (4.8 FAR). The applicant represents that the proposed development would contain 101, 953 square feet of residential floor area with 150 dwelling units, 101,692 square feet of commercial floor area with 90,424 square feet for UG 5 transient hotel use (202 hotel rooms) and 11,268 square feet for retail, and 518

square feet of community facility floor area of medical office use. The applicant further states that the proposed development would contain 290 accessory off-street parking spaces and two loading berths.

Furthermore, the applicant describes that the proposed development is a height factor building subject to a sky exposure plane of 2.7 to 1 that rises to a maximum building height of approximately 195 feet. The building’s total height for purposes of Federal Aviation Administration (“FAA”) is 195 feet above ground level (“AGL”) or 234 feet above mean sea level (“AMSL”), which is equivalent to 234 feet (NAVD88). The applicant states that the height of 234 feet (NAVD88) includes the building’s mechanical bulkhead that will be equipped with safety lighting as required by the FAA and is a permitted obstruction pursuant to Z.R. §§ 35-61 and 23-62(g).

The approach surface of LaGuardia Airport is the most restrictive in relation to the location of the proposed development and is, therefore, the surface which the proposed development must not penetrate. Z.R. § 61-21. The applicant represents that the subject site is located within the inner section of the approach surface for LaGuardia Airport Runway 31. The inner section of the approach surface for LaGuardia Airport Runway 31 begins 200 feet from the end of the runway at a width of 1,000 feet and extends 10,000 feet outbound to a width of 4,000 feet. The outer section then begins, extending another 15,000 feet outbound to a width of 8,500 feet. The applicant declares that the along-track distance of the subject site from Runway 31 at LaGuardia Airport is approximately 7,148.40 feet. The applicant represents that proposed development would penetrate the approach surface for LaGuardia Airport Runway 31 above a height of 148 feet (NAVD88). The applicant notes that the proposed development, at 234 feet (NAVD88) inclusive of permitted obstructions, penetrates the approach surface pursuant to Z.R. § 61-21 by 86 feet at its highest point.

II.

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

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construction of the Proposed Building, the FAA issued four Determinations of No Hazard to Air Navigation on June 22, 2021, under Aeronautical Study No. 2020-AEA-11584-OE at latitude 40-45-39.92N, longitude 73-50-04.84W, 195 feet above ground level, and 225 feet above mean sea level (“Building Point 1”), under Aeronautical Study No. 2021-AEA-4380-OE at latitude 40-45-40.55N, longitude 73-50-02.15W, 191 feet above ground level, and 229 feet above mean sea level (“Building Point 2”), under Aeronautical Study No. 2020-AEA-11586-OE at latitude 40-45-38.39N, longitude 73-50-01.43W, 178 feet above ground level, and 234 feet above mean sea level (“Building Point 3”), and under Aeronautical Study No. 2021-AEA-4381-OE at latitude 40-45-37.88N, longitude 73-50-03.26W, 184 feet above ground level, and 232 feet above mean sea level (“Building Point 4”), (collectively, the “FAA No Hazard Determinations”). The reviewed materials include a survey and four study points at the corners of the zoning lot keyed to maximum heights in AGL and AMSL, 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 not have a substantial adverse effect on safe and efficient utilization of navigable airspace by aircraft or on any air navigation facility.” According to the FAA Determination, the proposed development “would not be a hazard to air navigation” provided the following conditions are met:

1. The proposed development must be marked/lighted in accordance with FAA advisory circular 70/7460-1 M, Obstruction Marking and Lighting, red lights - Chapters 4,5 (Red) & 15.
2. Any failure or malfunction that lasts more than 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 operation is restored, notify the same number.

Moreover, the FAA states that once the structure has reached the greatest height, 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 five days. The FAA Determination further states that the proposal would have no effect on any existing or proposed arrival, departure, or en route instrument flight rule (“IFR”) operations, minimum flight altitudes, minimum vectoring altitudes (“MVA”), aeronautical procedures, or on any aeronautical facilities at LGA, or at any other known public use or military airport. Information on the proposal shall be forwarded for appropriate aeronautical charting. Study for possible VFR effect disclosed the proposal would have no effect on any existing or proposed arrival or departure VFR operations or procedures. The proposal would not conflict with any airspace required to conduct normal VFR traffic pattern at LGA, or any other public-use, joint-use, or military airport. The proposal would not require a VFR

aircraft to change its regular flight course or altitude, restrict VFR operations in any way, or create a dangerous situation during a critical phase of flight while operating under VFR conditions. Therefore, at a height of up to 195 ft. AGL, the proposal would have no substantial adverse effects on any existing or proposed VFR arrival, VFR departure, en route, minimum flight altitudes, or VFR helicopter routes in the vicinity of this location. The structure should be appropriately marked/lighted to make it more conspicuous to airmen should circumnavigation be necessary. The cumulative impact of the proposals, when combined with other proposed and existing structures, is not considered to be significant. Study did not disclose any adverse effects on existing or proposed public-use or military airports or navigational facilities, nor does the proposal affect the capacity of any known existing or planned public-use or military airport.

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 development pursuant to an aeronautical study the Proposed Development “would not have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on any air navigation facility.” According to the FAA Determination, the proposed development “would not be a hazard to air navigation” subject to certain conditions described above and noted on the enclosed plans. Moreover, the Port Authority Letter confirms that there are no additional comments to the FAA Determination.

Additionally, the Port Authority of New York and New Jersey states, by letter dated August 2, 2021, that it requests that all conditions stated in the FAA No Hazard Determination letter be followed and that the proposed development project adhere to the heights stipulated in the FAA’s determination. Exceeding these heights would warrant reevaluation by the FAA and could result in substantial adverse effects to air navigation. The Port Authority further states that separate 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.

By letter dated June 6, 2022, the New York City Department of Environmental Protection, Bureau of

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Environmental Planning and Analysis (“DEP”) states that it has reviewed the July 2021 Noise Assessment prepared for the application. Based on the noise assessment performed, DEP has concluded that the proposed project would not have significant impacts pertaining to vehicular or aircraft sources. Below are the summary of the assessment:

Noise

Project-generated traffic would not double vehicular traffic on nearby roadways, and therefore would not result in a perceptible increase in vehicular noise.

The project site is located within day-night average sound level (“DNL”) contour of 65 and 70 dBA for LGA Airport. Based on the ambient noise analysis performed, the highest ambient noise in the area would be 75 dBA for 36th Road Proposed Building frontage and 70 dBA for 37th Avenue Proposed Building frontage.

The higher attenuation requirement between the vehicular and aircraft noise is applied to the proposed project. The proposed building will, therefore, require a window-wall attenuation of 31 dBA attenuation on the 36th Road street frontage and 28 dBA on all other frontages to achieve an acceptable interior noise levels. In addition, alternate means of ventilation is provided for the closed-window condition. With these measures in place, there is no significant adverse impacts pertaining to noise.

By letter dated June 15, 2021, the New York City Landmarks Preservation Commission (“LPC”) find that the subject site has no architectural or archaeological significance.

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, the creation of new transit-oriented housing, 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 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.

III.

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*—within a C4-2 zoning district—the development of an 17-story mixed-use commercial, community facility, and residential 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 “Board Approved June 6, 2022”—Fourteen (14) sheets; and *on further condition*:

THAT based on the results of the Phase I, a comprehensive Asbestos-Containing Materials (“ACM”) survey shall be conducted by a licensed inspector, and any materials that are determined to be ACMs through sampling shall be removed by a licensed abatement contractor prior to building demolition for the planned development;

THAT a comprehensive lead-based paint (“LBP”) survey shall be conducted by a licensed inspector, and any materials that are determined to be lead based through sampling shall be removed by a licensed contractor prior to building demolition for the planned development;

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. 2021-51-BZ”), shall be obtained within four years, by June 6, 2026;

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation under Aeronautical Study Nos. 2020-AEA-11584-OE, 2020-AEA-11586-OE, 2021-AEA-4380-OE, 2021-AEA-4381-OE, issued June 22, 2021, shall be followed, including:

1. The proposed development must be marked/lighted in accordance with FAA advisory circular 70/7460-1 M, Obstruction Marking and Lighting, red lights - Chapters 4, 5 (Red) & 15.
2. Any failure or malfunction that lasts more than 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 operation is restored, notify the same number.
3. FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or within 5 days after

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the construction reaches its greatest height (7460-2, Part 2).

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 6, 2022.

CORRECTION: This resolution adopted June 6, 2022, under Calendar No. 2021-56-BZ, is hereby corrected to read as follows:

2021-56-BZ

CEQR #22-BSA-009K

APPLICANT – Sheldon Lobel, P.C., for 341-353 39th Street LLC, owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Prospect Charter School) contrary to ZR §42-00. M1-2 zoning district.

PREMISES AFFECTED – 341 39th Street, Block 704, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 13, 2021, acting on General Construction Application No. B00496744 reads in pertinent part:

Pursuant to Zoning Resolution Section 42-10, the proposed Use Group 3 school is not permitted as-of-right within an M1-2 zoning district. BSA special permit is required pursuant to Zoning Resolution Section 73-19.

This is an application under Z.R. §§ 73-19 and 73-03 to permit, on a site located within a M1-2 zoning district, the operation of a Use Group (“UG”) 3 school, contrary to Z.R. § 42-00. This application is brought on behalf of Brooklyn Prospect Charter Schools (the “School”).

A public hearing was held on this application on March 15, 2022, after due notice by publication in *The City Record*, with continued hearings on April 25, 2022 and May 24, 2022, and then to decision on June 6, 2022. Vice-Chair Chanda and Commissioner Scibetta performed inspections

of the Premises and surrounding neighborhood. Community Board 7, Brooklyn, recommends approval of this application with the following conditions:

- 1) The applicant continues to participate in Community Board 7’s review and study of the 39th Street corridor with regard to truck traffic and pedestrian safety on 39th Street.
- 2) For further consideration, the Board requests that DOT meet with Community Board 7 to discuss possible safety improvements to 3rd Avenue and 39th Street.

The Board received one form letter of support and three letters of objection to this application, citing concerns over traffic, lack of parking, congestion, poor road maintenance, and safety of the students.

The Premises are located on east side of 39th Street, between 3rd Avenue and 4th Avenue, within an M1-2 zoning district, in Brooklyn. With approximately 180 feet of frontage along 39th Street, 100 feet of depth, and 18,031 square feet of lot area, the Premises are currently occupied by one 7-story commercial building and one 10-story commercial building, which are joined internally.

The applicant proposes to convert the cellar, first, and second floors of the two existing buildings to a UG 3 charter elementary school. The applicant states that the School would occupy approximately 26,258 square feet of floor area. The applicant further represents that cellar would have approximately 9,739 square feet of floor area and would consist of a multipurpose room/gymnasium, a music classroom, and a cafeteria. The applicant also declares that the School would occupy approximately 13,056 square feet of floor area on the ground floor which would consist of classrooms, a nurse’s office, administrative rooms, offices, science classrooms, counseling rooms, and book storage; the second floor would occupy 13,472 square feet of the floor area and would consist of classrooms, offices, library, reading room/small classrooms, art room, and a terrace; and the outdoor terrace would be used throughout the day and after school for recess, physical education classes, and after-school programming but not for organized sports. The applicant seeks a special permit to allow the operation of a school in the M1-2 district, where UG 3 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(c) definition of “school” as it is an institution providing full-time day instruction and a course of study that meets the requirements of the New York State Education Law (“NYSEL”) §§ 3204, 3205, and 3210. NYSEL § 3204 requires 190 days of full-time instruction inclusive of legal holidays given by a competent teacher in English, and the School states that it provides at least 190 days of full-time instruction, inclusive of legal holidays, by competent teachers in English. The School describes its core subjects as: English Language, Arts, Math, Science, Studies, Art,

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Physical Education, and Foreign Languages.

NYSEL § 3205 requires that minors from 6 to 16 years old must attend full-time day instruction, and the School states that it provides full-time day instruction with classes held from 9:00 a.m. through 4:00 p.m. depending on the grade, from September to the end of June. NYSEL § 3210 requires attendance for non-public schools to be comparable to that of public schools, and the applicant posits that the School provides full-time day instruction for students in accordance with the University of the State of New York Education Department requirements. The Board of Regents of the University of the State of New York authorized the School on July 28, 2008 and extended the Charter on August 1, 2019. 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 a 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 between (1) 30,000 - 40,000 square feet of suitable space, with a strong preference for sites that allowed outdoor space and rent around \$30-40 per square foot. The applicant declares that it chose the subject Premises because (1) the Premises are newly renovated and have large floor plates and extensive available space for classrooms and a dedicated outdoor play area; (2) location with District 15 and approximately one mile from the new location of the Brooklyn Middle School; (3) seeks to serve the Sunset Park community; and (4) budget and availability.

The applicant notes that the School conducted an extensive search for a suitable location within the as-of-right zoning district but the eight locations in contention were unavailable for various reasons such as being too small for the School's programmatic needs; did not contain the correct dimensions; too expensive; or would not meet the School's time constraints. 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 located 400 feet from an R6B zoning district to the south and R7A zoning districts to the northeast and southeast. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of R6B and R7A 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 a adequate separation from noise, traffic, and other adverse effects of the surrounding non-residential district. Here, the applicant notes that it conducted a noise analysis in its Environmental Assessment Statement ("EAS") which concluded that the predominant noise sources in the area of the Premises are vehicular traffic. The applicant notes that the South Brooklyn Railway, which is located north of the Premises, is infrequently used, with the occasional delivery of new rolling stock for the subway.

The applicant further describes that the noise analysis was conducted to determine the level of building attenuation necessary to ensure that interior and exterior noise levels satisfy City Environmental Quality Review ("CEQR") requirements, to determine if the proposed building would result in adverse impacts to surrounding receptor and to determine whether projected generated traffic will increase Noise Passenger Car Equivalents by greater than 100% on adjacent roadways. The applicant states that the result of the Passenger Car Equivalent Screening demonstrate that the proposed project would not increase existing noise values by greater than 100% and did not warrant further analysis, as per CEQR standards.

Additionally, the applicant states that the proposed building would introduce one 2,205 square foot recreation terrace outdoor area for student use located at the second floor level of the building. The applicant conducted an analysis of playground generated noise and the planned future use for the property to the rear of the premises. The NYC Metropolitan Transit Authority ("MTA") has issued a Request for Proposal ("RFP") for a design build contract for a Railcar Acceptance Facility for the property at 3rd Avenue between 38th and 39th Streets and 38th Street Yard in Brooklyn. The facility is planned to support the delivery of new railcars by boat and barge and the deployment of the railcars once tested and accepted. The operation of the facility is planned for 2025. The applicant conducted a Federal Transit Administration Noise Impact Screening to evaluate the noise from the future planned facility. Based on the resulting noise levels no additional window wall attenuation above that determined by the in-field noise monitoring and playground noise analysis would be required.

Finally, the applicant concludes that based on existing noise levels and future projected noise levels associated with outdoor school space, the following building attenuation would be required to ensure acceptable interior noise levels within the School building, pursuant to CEQR standards:

- 1) A composite window-wall attenuation of 28 dB(A) would be required for the School space along 39th Street (southern façade);
- 2) A composite window-wall attenuation of 31 dB(A) would be required on the second floor of the northern façade abutting the Special Art Room;
- 3) To maintain an interior noise level of 45 dB(A) with a closed window condition, an alternate means of ventilation would be

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provided.

- 4) A 10-foot tall chain link fence fitted with Acoustifence® AF-6 will be installed along the boundary of the proposed second floor terrace play area, fitted with acoustic materials on the lower 6 feet of the fence as approved by DEP, which have a minimum of 28 dB STC rating.

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, the Board raised concerns over the safety of the students while at the proposed building. Specifically, the Board voiced concerns that the students would be sharing a staircase with other tenants of the building and members of the public who were not affiliated with the School as the applicant states that the building would include commercial uses in the remainder of the buildings not occupied by the School.

In response to the Board's concerns regarding safety and conflict of uses, the applicant proposes the following safety measures:

- Cellar Safety Measures: Passenger Elevator 2 is the only elevator that services the cellar space. The vestibule next to the elevator requires key card access. Stair D is an egress stair between the cellar and the first floor only. The school is the only tenant with access to this staircase.
- First Floor Safety Measures: Students will not have access to the commercial tenant lobby/elevator bank unless required for accessibility. Any student who needs the elevator will be accompanied by an adult at all times. An alarmed egress door will be located at the rear of the vestibule. A second door requiring key card access will be provided for students accessing the first floor by elevator.
- Stairs:
 - Stair A: Stair A provides circulation for the main commercial tenants as the stairs provide access to commercial lobby. Tenants would use Stair A for circulation if they choose not to use the elevator. There would be alarmed access to the school floors. Students will not have access to these stairs.
 - Stair B: Stair B provides egress from the cellar to the 10th floor and roof. The commercial tenants do not have access to Stair B from the first floor. It will be used as a school communication stair between the first and second floor. Alarmed gates will be installed above the 2nd floor to restrict access in either direction. The

School will deploy a flag person at times when the stairs are in use by students.

- Stair C: Stair C serves as egress stair from the cellar to the 7th floor and roof. Building tenants do not have access to Stair C from the 1st floor. It will be used as a school communication stair between the 1st and 2nd floors. Alarmed gates will be installed above the 2nd floor. The school would deploy a flag person at times when stairs are in use by students.
- Stair D: Stair D serves as school circulation and emergency egress. Commercial tenants will not have access to this staircase.

By correspondence dated February 22, 2022, the Department of Transportation ("DOT") School Safety division states that it has concerns about the proposed location for the School and conditions which it believes must be met for a school to be sited at this location. To begin, 39th Street between 3rd Avenue and 4th Avenue is a narrow 30 foot two-way street that is both a bus route and a designated local truck route. A 30-foot street width is typically undesirable for two-way traffic operations with bus stops on both sides, and DOT seeks to convert such streets to one-way traffic flow, when feasible to do so, due to traffic safety and operations concerns. However, in this case, 39th Street serves as a critical roadway that accommodates both bus and freight movements, so two-way operations must be maintained. Given that schools are significant pedestrian and vehicular traffic generators school traffic would need to be closely managed to ensure that school buses, family vehicles, public buses, and trucks would not conflict with student pedestrians or with one another in this very limited space.

There is an existing 40.4 foot curb cut, serving two loading docks in the same building as the School, immediately west of the School's main entrance. This presents a safety concern with respect to vehicles backing in over the sidewalk into the docks (with limited visibility) in a location where children, caregivers, faculty, and staff are likely to be present and congregating before and after school, including throughout the "afterschool" period. It is imperative that the School, and any other building tenants, refrain from accessing the docks during the morning arrival, afternoon dismissal, or afterschool periods.

Lastly, there are land use concerns on the block of the School which warrant concern. The auto body shop on the north side of 39th Street (i.e., the same side as the school) appears to regularly park a variety of vehicles on the sidewalk. Although this behavior is illegal, its presence presents practical safety concerns for children, parents/caregivers and faculty/staff walking between the School to/from all points east. The School would need to work with NYPD and the neighboring property owner to ensure that this activity ceases. DOT will also reach out to NYPD to ask for their assistance in this matter.

For a school to move forward at this location we

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would recommend that the school ensure that:

- School buses and family vehicles would not dwell in the curb lane beyond the time necessary for students to board/alight vehicles
- Double parking would not occur in front of the school
- Family vehicles would not drop children on the opposite side of the street from the school
- Family vehicles would not make U turns in front of the school
- Public buses would not be unnecessarily obstructed
- The loading dock within the building would not be accessed by vehicles during morning arrival, afternoon dismissal, or afterschool hours
- Vehicles would not park on the sidewalk on the blockface of the school.

By letter dated May 23, 2022, DOT approved a Post-Approval Commitment Letter, dated May 18, 2022, confirming the applicant's responsibilities to perform follow-up traffic monitoring at the intersection of 39th Street and 4th Avenue and 39th Street and 3rd Avenue within three months of school opening, and within six months of full occupancy (anticipated 2025) for the subject Premises.

The purpose of the monitoring studies at 39th Street and 4th Avenue and 39th Street and 3rd Avenue, both three months after the school opening, as well as at full capacity, is to determine the trips generated by the project, and to observe traffic operations at the intersection of 39th Street and 4th Avenue and 39th Street and 3rd Avenue to verify the potential significant adverse impacts and proposed measures to mitigate any such impacts including, but not limited to, signal timing reallocation, lane configuration, etc.

Before commencing the monitoring plans, the applicant will submit a detailed scope of work for NYCDOT review and approval. The applicant will be responsible for all costs associated with the monitoring program and subsequent design and construction of any improvement measures.

It is understood that the applicant will be responsible for the cost of the post-opening studies, and implementation of the safety improvements and project improvement measures listed below at the intersection of 39th Street and 4th Avenue and 39th Street and 3rd Avenue or similar measures as determined by the post-opening studies pursuant to the CEQR Technical Manual. This Letter of Commitment also confirms DOT's financial commitment to implement certain safety and project improvements, as described below, and to continue working with the NYC DOT to ensure that the appropriate safety improvements are employed prior to school opening. The following roadway and pedestrian improvements are recommended as part of the Proposed Project. The applicant will provide all required drawings and information for review and approval by NYC DOT or the appropriate regulatory agency.

As shown in the proposed site plan, the following

signage changes are proposed:

- To facilitate school pick-up and drop-off activities, modify curbside regulations to create "No Standing School Days 7 AM – 4 PM" parking signage along the 39th Street frontage of the school for approximately 256' (approximately 180' of area for vehicle loading and unloading, currently designated as "No Parking Anytime"). The School must submit the request via "Contact the Commissioner" form on the DOT website towards the end of construction and at least six months prior to school opening so that DOT can site and install the School loading signage in time for school opening.
- To facilitate vehicle maneuvering and school drop-off and pick-up activities, modify curbside regulations from "No Parking Anytime" to "No Standing Anytime" along the north side of 39th Street for approximately 88 feet within the area between the end of the bus stop zone designation to the east (located on the far side of 4th Avenue) and the start of the proposed "No Standing School Days" signage to the west.
- To facilitate vehicle maneuvering and school drop-off and pick up activities, modify curbside regulations along the south side of 39th Street to extend the current "No Standing Anytime" signage approximately 75 feet west, and modify the remaining area currently designated "No Parking 8AM – 6PM Mon – Friday" to "No Standing Anytime" (approximately 296 feet).
- Add "Stop Here on Red" Sign at the 3rd Avenue approach of 39th Street (westbound through lane).

As shown in the proposed site plan, to facilitate vehicle maneuvering and school drop-off and pick-up activities, modify pavement markings as follows:

1. Shift center line south by 8' converting one 12' westbound lane, one 10' eastbound lane, and one 10' eastbound lane to one 20' westbound lane with "No Standing School Days" signage in front of the school and one 12' eastbound lane.
2. Provide one 52' taper to transition from the preserved one westbound and two eastbound lanes at the intersections of 39th Street and 4th Avenue.
3. Shift the westbound stop bar 20' east and add a "Stop Here on Red Sign" to accommodate existing northbound right turns from 3rd Avenue onto eastbound 39th Street.
4. Maintain 80' left-turn bay at 39th Street and 4th Avenue.

As shown in the proposed site plan, the applicant will install ADA-compliant pedestrian ramps per NYC DOT

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standards at the bounding intersections where ADA-complaint ramps are not presently installed at all four corners of 4th Avenue and 39th Street and at all four corners and ramps crossing under the Brooklyn Queens Expressway (“BQE”) at 3rd Avenue and 39th Street. All pedestrian ramps at the above locations will be constructed to meet or exceed current ADA standards (2010 ADA) and to comply with the latest version of the NYC DOT Highway Rules, Standard specifications, and standard details of construction. Ramps that do not comply must be reconstructed.

Traffic conditions were evaluated at two intersections during the Weekday AM Arrival, Midday School Dismissal, and PM After School Dismissal peak hours. Under the 2025 With-Action Conditions, as currently analyzed, the proposed project is projected to experience significant adverse impacts at the following lane groups:

Weekday AM Arrival Peak Hour
39th Street and 3rd Avenue

- Eastbound left-turn/through/right-turn; and
- Westbound left-turn/through/right-turn.

39th Street and 4th Avenue

- Eastbound left-turn lane; and
- Westbound through/right-turn lane.

Weekday Midday School Dismissal Peak Hour
39th Street and 4th Avenue

- Westbound through/right-turn lane.

Weekday PM After School Dismissal Peak Hour
39th Street and 3rd Avenue

- Westbound left-turn/through/right-turn.
39th Street and 4th Avenue
- Westbound through/right-turn lane.

Accordingly, the following signal timing improvements are recommended as part of the Proposed Project:

Weekday AM Arrival Peak Hour
39th Street and 3rd Avenue

- Shift five seconds of green time from the northbound/southbound phase to the eastbound/westbound phase during the Weekday AM Arrival Peak Hour.

39th Street and 4th Avenue

- Shift two seconds of green time from the northbound/southbound phase to the eastbound/westbound phase during the Weekday AM Arrival Peak Hour.

Weekday Midday School Dismissal Peak Hour
39th Street and 4th Avenue

- Shift one second of green time from the northbound/southbound phase to the eastbound/westbound phase during the Weekday MD School Dismissal Peak Hour.

Weekday PM Afterschool Dismissal Peak Hour
39th Street and 3rd Avenue

- Shift two seconds of green time from the northbound/southbound phase to the eastbound/westbound phase during the Weekday PM Afterschool Dismissal Peak Hour.

39th Street and 4th Avenue

- Shift one second of green time from the northbound/southbound phase to the eastbound/westbound phase during the Weekday PM Afterschool Dismissal Peak Hour.

The monitoring plans at 39th Street and 3rd Avenue and 39th Street and 4th Avenue will consist of the following activities on one typical day for the three weekday peak hours for the intersection listed above:

- Trip generation survey including mode choice
- Intersection turning movement counts, including vehicle classification counts, pedestrian counts, and bicycle counts
- Field observations of intersection operations and queue lengths
- Traffic analyses using Synchro
- Recommendations to improve intersection operations, if necessary.

The purpose of the monitoring studies at 39th Street and 4th Avenue and 39th Street and 3rd Avenue, both three months after the school opening, as well as at full capacity, is to determine the trips generated by the project, and to observe traffic operations at the intersection of 39th Street and 4th Avenue and 39th Street and 3rd Avenue to verify the potential significant adverse impacts and proposed measures to mitigate any such impacts including, but not limited to, signal timing reallocation, lane configuration, etc. Before commencing the monitoring plans, the applicant will submit a detailed scope of work for NYCDOT review and approval. The applicant will be responsible for all costs associated with the monitoring program and subsequent design and construction of any improvement measures.

The following additional safety safeguards will be employed at commencement:

- The School will employ a NYC DOT certified pedestrian management company to assist with planning for arrival and dismissal operations and staff and parent training prior to school opening, and upon school commencement to assist staff with arrival and dismissal operations and to assess and adjust arrival and dismissal operations and safety measures as needed.
- American Traffic Safety Services Association (“ATSSA”) Flagger and Pedestrian Safety Professional (“CPSP”) certified staff stewards will be stationed along the “No Standing School Days” zone to assist with vehicle loading/unloading during arrival and dismissal.
- At minimum, 50% of staff (estimated at 25 staff members at full grade enrollment) maintain valid ATSSA Flagger and CPSP certifications. This will ensure that staff assisting during school drop-off and pick-up operations are adequately trained on pedestrian and traffic management services to

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ensure the safe and efficient movement of pedestrians and vehicles, as well as their own safety.

- A crossing guard will be requested from the NYPD at the intersection of 3rd Avenue and 39th Street. The School commits to employing staff members with ATSSA Traffic Control Person Certification at school commencement at the intersection of 3rd Avenue and 39th Street, until such time that a crossing guard can be provided.
- A student and caregiver orientation will be held and parent handbooks will be distributed prior to the start of each school year; this will also be provided for any new students transferring to the School during the course of the school year. The orientation and parent handbooks will detail the history of the School, including the Z.R. § 73-19 Special Permit, the importance of student safety, and the arrival and dismissal policies and procedures. These policies and procedures will be strictly enforced. Orientation will include a training session for caregivers. Caregivers will be required to sign the parent handbooks and pledge to adhere to School policies and procedures and to attend refresher courses on traffic safety. Should the School observe any operations or activities that are in violation of these procedures and policies, notifications will be sent out to all caregivers detailing the observed violations with a reminder of the School's protocols and procedures.
 - The School will designate a School Safety Administrative coordinator to oversee the following implementation of Arrival and Departure Safety protocols.
 - The hours of arrival and departure by grade cohort and mode of travel will be provided to caregivers. Caregivers will be instructed to pick-up and drop-off during the designated time slots specified.
 - All caregiver vehicles and buses during drop-off and pick-up must arrive via 4th Avenue and depart via 3rd Avenue.
 - All caregiver vehicles will be prohibited under any circumstances from double parking, parking on the sidewalk, obstructing MTA bus stops, and dropping students off on the opposite side of the street from the School.
 - Caregivers of students arriving and departing by private car will be advised that students exit the vehicle on the passenger side. Additionally, caregivers will be prohibited from parking and entering the building when using the

loading and unloading zone. Parents will be asked to remain in their cars and be prepared to move quickly to avoid congestion. Trained staff members will assist with the loading and unloading of vehicles within the "No Standing School Days" zone to ensure that these conditions are strictly enforced.

- The School Administration commits to provide a regular (monthly) in-field audit during arrival, dismissal, and afterschool on the pedestrian and vehicular access patterns and behavior associated with the School and adjacent businesses to provide for continuous safety improvement as the School becomes a part of the neighborhood.
- The School commits to providing staggered arrival and departure times to break up the volume of students into manageable groups.
- Annually, before commencement, as part of school planning, surveys will be distributed to caregivers of students on the anticipated mode of arrival and departure in order to plan for arrival and dismissal operations and make adjustments, as necessary.
- The School Administration will communicate regularly with its adjacent business neighbors to provide foresight and understanding to their co-existence in the neighborhood.

NYC 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. Future Builder's Pavement Plans ("BPP") will be submitted for review to School Safety, SIM, and any other involved NYC DOT units for review and approval. DOT can modify the BPP as warranted in connection with the final review of transportation safety improvement measures. All expenses related to the post-opening monitoring studies, design, installation of the traffic controls, proposed geometric modifications, traffic signs and pavement markings removals/installations would be funded by the applicant. The one exception is that NYC DOT will install the necessary signage once it receives a request for signage installation from the school. If traffic controls are warranted and approved by the NYC DOT, the applicant will engage a design consultant that would submit the necessary signage designs and would work closely with the Signals Division at the NYC DOT (unless the City elects to provide the signage designs). The applicant will submit all of the required drawings as per AASHTO and NYC DOT specifications and requirements for DOT review and approval. It is understood that NYC 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. The School must submit the request via "Contact the Commissioner" form on DOT website towards the end of construction and at least six months prior to school opening so that DOT can site and install the school

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loading signage in time for school opening. Accordingly, the Board finds that the requirements of Z.R. § 73-19(d) are met.

By correspondence dated May 24, 2022, the Fire Department states that the Bureau of Fire Prevention has no objection to the use of a card key access at the second floor. Such card key access is connected to the fire alarm system, that in the event the fire alarm is activated, the card key becomes disabled.

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. 22BSA009K, dated June 6, 2022. 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 22, 2021, the Landmarks Preservation Commission (“LPC”) states that the property contains no architectural significance and no archaeological significance.

By letter dated May 24, 2022, the Department of Environmental Protection (“DEP”), Bureau of Environmental Planning and Analysis states that it has reviewed the Response to Comments document and revised EAS, dated May 23, 2022. DEP has the following comments:

Air Quality:

Based on the results of the Air Quality analysis performed as per the CEQR Technical Manual, it was determined that the proposed project would not result in significant adverse impacts.

Noise:

A noise assessment was performed and determined that the portion of the school space facing 39th Street (the southern façade) would require a minimum composite window/wall attenuation of 28 dBA. The school space facing the 2nd floor Terrace Playground (the northern façade) would require a minimum composite window/wall attenuation of 31 dBA. Furthermore, the perimeter fence for the 2nd floor terrace would be 10 foot high and fitted with acoustic materials which have a minimum of 28 dB STC

rating. To maintain an interior noise level of 45 dBA, an alternative means of ventilation will also be required. With those conditions in place, the proposed project would not result in a significant adverse noise impact.

By correspondence dated June 2, 2022, DEP states that the above-mentioned acoustic materials can be located on the lower 6 feet of the perimeter fence. By correspondence dated April 12, 2022, DEP states that it has reviewed the March 2022 Phase II Remedial Action Work Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) for the proposed project. The RAP and CHASP are acceptable on condition that a 20-mil Retro-Coat Vapor Intrusion Coating system is installed on the existing cellar slab throughout the entire cellar area, and that preferential pathways (cracks, holes, etc.) should be sealed as described in the RAP. The proposed vapor barrier system should be installed unless an amendment is approved by DEP. Additionally, 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., proof of sealing of preferential pathways (cracks, holes, etc.) or utilities entries and proof of installation of engineering control system, etc.)

By correspondence dated May 23, 2022, DOT states that the EAS identifies improvement measures involving geometric reconfiguration (including lane restriping, shifting centerlines, etc.) signal timing modification, modification to parking regulations, etc. At the intersections of 39th Street and 3rd Avenue, and 39th Street and 4th Avenue. 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”).

The TMP will include trip generation, modal split and origin/destination surveys; traffic and pedestrian data collection; field observations of intersection operations and queue lengths, LOS analyses using Synchro including progression and queueing analyses; recommendations to improve intersection operations, if necessary, etc. The TMP will be performed three months after the first year of school occupancy and six months after full occupancy (anticipated 2025). Prior to undertaking any TMP the applicant will prepare and submit a scope of work for NYC DOT review and approval.

The applicant commits to employ a certified pedestrian management company to assist with planning for arrival and dismissal operations, maintain a minimum of 50% of staff with ATSSA Flagger and CPSP certifications to ensure the safe and efficient movement of pedestrians and vehicles in front of the school site. The applicant will also request school crossing guards from the NYC Police Department for the intersection of 39th Street and 3rd Avenue during school arrival and dismissal peak hours. In

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the absence of crossing guards, the applicant commits to employing staff members with ATSSA certification at the intersection of 3rd Avenue and 39th Street at their expense.

There is a 40' curb cut in front of the property that is situated in front of the buildings serving two bays. The landlord is committed to enforcing and restricting the use of this curb cut as stated in the lease rider, which would prohibit tenants from entering or exiting the loading bays during peak school drop-off and pick-up hours. The rider also includes conditions that the public sidewalks in the vicinity of the building shall be kept clear. In particular, such sidewalks shall not be used for parking, the storage of materials, or for any other unlawful purpose. The landlord also commits to installing convex safety mirrors at either side of the bays to alert vehicles entering and exiting the building of pedestrian activity on the sidewalk.

The applicant has also committed to coordinating the following improvements with NYC DOT prior to the opening of the school:

Modification to curbside parking regulations on the north and south curbs along 39th Street, between 3rd Avenue and 4th Avenue, to facilitate the vehicle maneuvers and school pick-up and drop-off activities on the north curb.

Lane restriping on 39th Street, between 3rd Avenue and 4th Avenue, to maintain one 80-foot-long left turn bay and one 12-foot-wide travel lane at the eastbound approach at the intersection of 39th Street and 4th Avenue and one 20-foot-wide lane at the westbound approach at 39th Street and 3rd Avenue Intersection.

Signal timing modification to the intersections of 39th Street and 4th Avenue and 39th Street and 3rd Avenue intersections.

Installation of ADA compliant pedestrian ramps at all four corners at the intersections of 3rd Avenue and 39th Street and 4th Avenue and 39th Street. The applicant will submit to NYC DOT all required materials needed to review and approve the above measures. 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 NYC DOT's direction. NYC DOT will continue to participate in the review process related to proposed geometric reconfiguration, reconstruction of pedestrian ramps drawings. The applicant should submit all relevant materials such as drawings/design as per 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. Accordingly, 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 within a M1-2 zoning district, the operation of a school, contrary to Z.R. § 42-10; *on condition* that all work, site conditions and operations shall substantially conform to drawings filed with this application marked "Board Approved June 6, 2021" – Thirty-Eight (38) sheets; and on *further condition*:

THAT as per the March 2022 DEP-approved RAP, a 20-mil Retro-Coat Vapor Intrusion Coating System will be installed on the existing cellar slab throughout the entire cellar area;

THAT the proposed vapor barrier system shall be used, unless an amendment is approved by DEP;

THAT preferential pathways, such as cracked holes, should be sealed;

THAT at the completion of the project and prior to occupancy of the cellar, a Professional Engineer ("P.E.") certified Remedial Closure Report shall be submitted to DEP for review and approval;

THAT such closure report shall be submitted prior to the receipt of the certificate of occupancy for the cellar;

THAT a 10-foot tall chain link fence fitted with Acoustifence® AF-6 will be installed along the boundary of the proposed second floor terrace play area, fitted with acoustic materials on the lower 6 feet of the fence as approved by DEP, which have a minimum of 28 dB STC rating;

THAT the portion of the school space facing 39th Street southern facade will require a minimum composite window/wall attenuation of 28 dBA, and the school space facing the 2nd floor terrace playground on the northern facade will require a composite window/wall attenuation of 31 dBA. To maintain an interior noise level of 45 dBA, an alternate means of ventilation will be required;

THAT all transportation measures as described in the Final Environmental Assessment Statement Chapter 16: Transportation and Department of Transportation Post-Approval Commitment Letter (CEQR No. 22BSA009K) shall be implemented with final approval of measures to be determined by the Department of Transportation;

THAT school buses and family vehicles would not dwell in the curb lane beyond the time necessary for students to board/alight vehicles;

THAT double parking shall not occur in front of the school;

THAT family vehicles shall not drop children on the opposite side of the street from the school;

THAT family vehicles shall not make U turns in front of the school;

THAT public buses shall not be unnecessarily obstructed;

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THAT the loading dock within the building shall not be accessed by vehicles during morning arrival, afternoon dismissal, or afterschool hours;

THAT vehicles shall not park on the sidewalk on the blockface of the school;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2021-56-BZ”) shall be obtained within four years, by June 6, 2026;

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 6, 2022.

2017-269-BZ

APPLICANT – David L Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 21-22, 2022, at 10 A.M., for continued hearing.

2020-14-BZ

APPLICANT – Akerman LLP, for 34-10 12th 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 12th Street, Block 326, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2020-44-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla City Holdings Corp., owner.

SUBJECT – Application May 22, 2020 – 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.

PREMISES AFFECTED – 2228 Gerritsen Avenue, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for continued hearing.

2021-43-BZ

APPLICANT – Greenberg Traurig, LLP, for Harmony Rockaway LLC, owner.

SUBJECT – Application June 29, 2021 – Variance (§72-21) to permit the repurposing of an existing three-story plus cellar building to be occupied with commercial offices (UG 6B) and as of right community facility uses contrary to ZR §32-00. R4-1 zoning district.

PREMISES AFFECTED – 90-91 Beach Channel Drive, Block 16124, Lot (s) 33, 76, 78, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to July 18-19, 2022, at 10 AM, for decision, hearing closed.

PUBLIC HEARINGS

MONDAY-TUESDAY, JUNE 6-7, 2022

2:00 P.M.

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

233-15-BZ

APPLICANT – Fried, Frank, Harris, Shriver, and Jacobson by Melanie Meyers, Esq., for CSC 4540 Property Co. LLC, owner.

SUBJECT – Application October 2, 2015 – Variance (§72-21) to permit a mixed-use residential building with retail on the ground floor, contrary to use regulations (ZR §42-10), maximum building height (ZR §62-341(c)(2)), tower floor plate in excess of 7,000 sq. ft. (ZR 62-341(c)(4)), and setback above base height from a shore public walkway (ZR §62-341(a)(2)). M1-4 ZD and waterfront area.

PREMISES AFFECTED – 45-40 Vernon Boulevard, Block 26, Lot(s) 4 & 8, Borough of Queens.

COMMUNITY BOARD #2Q

MINUTES

ACTION OF THE BOARD – Laid over to September 21-22, 2022, at 10 AM, for postponed hearing.

2020-50-BZ

APPLICANT – Law Office of Lyra J. Altman, for Haim Haddad, owner.

SUBJECT – Application June 8, 2020 – 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.

PREMISES AFFECTED – 2328 Olean Street, Block 7677, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 AM, for postponed hearing.

2021-64-BZ

APPLICANT – Law Office of Lyra J. Altman, for Ouni Mamrout, owner.

SUBJECT – Application October 12, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 zoning district.

PREMISES AFFECTED – 205-207 Gravesend Neck Road, Block 7154, Lot(s) 3 & 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 AM, for continued hearing.

2021-67-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniel Husney, owner.

SUBJECT – Application October 22, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 2307 Ocean Parkway, Block 7183, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 AM, for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Chase Vine, *Counsel*

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HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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2022-33-A

3-13 125th Street, Block 3922, Lot(s) 118, Borough of **Queens, Community Board: 7**. Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3A zoning district. R3A district.

2022-34-A

3-15 125th Street, Block 3922, Lot(s) 0018, Borough of **Queens, Community Board: 7**. Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3A zoning district. R3A district.

2022-35-A

3-17 125th Street, Block 3922, Lot(s) 116, Borough of **Queens, Community Board: 7**. Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3A zoning district. R3A district.

2022-36-A

814 Richmond Terrace, Block 0070, Lot(s) 0020, Borough of **Staten Island, Community Board: 1**. Proposed enlargement of an existing building which is within the unbuilt portion of the mapped street, contrary to General City Law 35. M1-1 zoning district. M1-1 district.

2022-37-BZ

1864 East 22nd Street, Block 6827, Lot(s) 0017, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R3-2 zoning district. R3-2 district.

2022-38-BZ

4902 & 4920 14th Avenue, Block 5643, Lot(s) 33,42, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the development of a House of Worship (UG 4A) contrary to ZR §§ 24-11 (lot coverage), 24-361 (rear yard), 24-522 (maximum height of walls and required setbacks), and 23-62 (permitted obstructions). R6 zoning district. R6 district.

2022-39-BZ

188-98 Varet Street, Block 3117, Lot(s) 18,24, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-19) to permit the development of a school (UG 3) (Williamsburg Charter High School) contrary to ZR §42-12. Amendment to previously approved plans for the main school building. M1-1 and M1-2 zoning district. M1-1/M1-2 district.

2022-40-BZ

334 Van Duzer Street, Block 00515, Lot(s) 0023, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the development of a two-family detached home contrary to minimum lot width regulation ZR §§23-32 & 23-33. R3X zoning district. R3X district.

2022-41-BZ

122-05 Merrick Boulevard, Block 12480, Lot(s) 0001, Borough of **Queens, Community Board: 12**. Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-3/R5D zoning district. R5D/C1-3 district.

2022-42-A

30 Page Avenue, Block 7580, Lot(s) 0080, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story warehouse partially within the bed of two streets contrary to General City Law §35. M1-1 Special Richmond Purpose District. M1-1(SRD) district.

2022-43-A

638 East 11th Street, Block 00393, Lot(s) 25, 26, 27, Borough of **Manhattan, Community Board: 3**. Applicant seeks a variance, pursuant to BC Appendix G107.1 and BC Appendix G107.2, to permit the dry floodproofing as part of a conversion to a portion of the existing building's ground floor to residential use and a proposed enlargement infill at the cel R8B district.

DOCKETS

2022-44-A

638 East 11th Street, Block 00393, Lot(s) 25, 26, 27, Borough of **Manhattan**, **Community Board: 3**. Appeal of a NYC Department of Buildings determination dated June 13, 2022 that denied an application to permit dry floodproofing of the residential first floor of a proposed mixed-used building. R8B district.

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

CALENDAR

TELECONFERENCE PUBLIC HEARINGS MONDAY-TUESDAY, SEPTEMBER 12-13, 2022 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, September 12th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday September 13th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

167-55-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for The Gargano Family Limited Partnership, owner; GSA Petroleum, lessee.

SUBJECT – Application December 1, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 7, 2015; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board's Rules of Practice of Procedures. R3-1 zoning district.

PREMISES AFFECTED – 20-65 Clintonville Street, Block 4752, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for 1108 Allerton Avenue, LLC, owner.

SUBJECT – Application December 13, 2021 – Extension of term and Waiver for a previously granted Variance (§72-21) permitting the operation of an existing food products manufacturing establishment (Use Group 17B) which expired on July 1, 2017; Amendment to permit modifications to a portion of the site; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 1108 Allerton Avenue, Block 4456, Lot 47, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEALS CALENDAR

2022-4-BZY

APPLICANT – Sheldon Lobel, P.C., for President Sai, LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-4/R6B zoning district.

PREMISES AFFECTED – 529 President Street, Block 441, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2022-17-A

APPLICANT – Carter Ledyard & Milburn LLP, for 25C LLC, owner.

SUBJECT – Application March 10, 2022 – 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. M1-2 zoning district.

PREMISES AFFECTED – 27 Stewart Avenue, Block 2994, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ZONING CALENDAR

233-15-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP., for CSC 4540 Property Co. LLC, owner.

SUBJECT – Application October 2, 2015 – Variance (§72-21) to permit a mixed-use residential building with retail on the ground floor, contrary to use regulations (ZR §42-10), maximum building height (ZR §62-341(c)(2), tower floor plate in excess of 7,000 sq. ft. (ZR 62-341(c)(4)), and setback above base height from a shore public walkway (ZR §62-341(a)(2)). M1-4 ZD and waterfront area.

PREMISES AFFECTED – 45-40 Vernon Boulevard, Block 26, Lot(s) 4 & 8, Borough of Queens.

COMMUNITY BOARD #2Q

2020-10-BZ

APPLICANT – Law Office of Lyra J. Altman, for Penina Feltman and Scott M. Feltman, owners.

SUBJECT – Application January 16, 2020 – 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.

PREMISES AFFECTED – 609 Jarvis Avenue, Block 15595, Lot 25, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

2020-51-BZ, 2020-53-BZ, 2020-52-A & 2020-54-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Nord, LLC, owner.

SUBJECT – Application June 12, 2020 – Variance §72-21 to permit the development of a self-storage warehouse (UG 16) contrary to ZR 22-10; located on a site not fronting on a mapped street contrary to General City Law §36. M1-1 and R3-2 zoning district.

PREMISES AFFECTED – 105 Ridgeway Avenue, Block 2610, Lot 150, Borough of Staten Island.

COMMUNITY BOARD #2SI

2021-50-BZ

APPLICANT – Friedman, P.E., for Lawrence Charitable Trust, owner; Hadran Academy Inc., lessee.

SUBJECT – Application September 12, 2022 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Hadran Academy) contrary to ZR §42-00. Variance (§72-21) to permit the development of the building contrary to underlying bulk regulations. M1-1, R5 zoning district. Special Ocean Parkway District.

PREMISES AFFECTED – 50 Lawrence Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2022-27-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Success Academy Charter Schools, Inc., owner.

SUBJECT – Application May 11, 2022 – Special Permit (§73-19) to permit the construction of a new school (UG 3) (Success Academy) contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 101 East 150th Street, Block 2354, Lot 1, Borough of Bronx.

COMMUNITY BOARD #4BX

2022-8-BZ

APPLICANT – Cuddy & Feder LLP, for AP Wireless II, LLC, owner; Crown Castle USA Inc., lessee.

SUBJECT – Application January 19, 2022 – Variance (§72-21) to permit an existing cellular monopole in excess of permitted height requirement contrary to ZR §33-43. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 183-01 Harding Expressway, Block 7067, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

Shampa Chanda, Acting Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY, JULY 18-19, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Eric Palatnik, P.C., 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

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 variance, under Z.R. § 11-411, which permitted the use of the Premises as an automotive service station (Use Group 16B) with accessory convenience store and expired on October 23, 2019, and an extension of time to obtain a certificate of occupancy which expired on June 2, 2018.

A public hearing was held on this application on June 30, 2020, after due notice by publication in *The City Record*, with continued hearings on September 23, 2021, February 7, 2022, and June 6, 2022, and then to decision on July 18, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed an inspection of the Premises and surrounding area. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the southwest corner of Knapp Street and Avenue X, within an R3-2 (C2-2) zoning district, in Brooklyn. With approximately 140 feet of frontage along Knapp Street, 100 feet of frontage along Avenue X, and 14,000 square feet of lot area, the Premises are occupied by an existing automotive service station (UG 16B) with accessory convenience store (2,475 square feet of floor area).

The Board has exercised jurisdiction over the Premises since June 22, 1954, when, under the subject calendar number, the Board granted a variance to permit the erection and maintenance of a gasoline service station and a one-

story accessory building for a term of 15 years, expiring June 22, 1969.

Subsequently, under the subject calendar number, the variance was amended and the term extended, most recently on August 11, 2009 for a term of 10 years, expiring October 23, 2019.

On June 18, 2013, under the subject calendar number, the variance was further amended to permit the conversion of existing automotive service bays to an accessory convenience store and an enlargement of the accessory building on further condition that a new certificate of occupancy be obtained by June 18, 2015.

On June 2, 2016, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to permit an extension of time to obtain a certificate of occupancy, to June 2, 2018, on further condition that all relevant conditions from prior grants, including, but not limited to, the term of the variance and that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic, appear on the certificate of occupancy.

The term of the variance and time to have obtained a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than 30 days since the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application.

The applicant represents that the Premises continue to operate as an automotive service station and no changes are proposed. The applicant states that the Premises operate 24 hours per day, 7 days per week; attendants have unobstructed view of the fuel dispensing operation, and a security camera system is utilized to monitor the Premises to ensure that vehicles do not obstruct the sidewalk. Further, the applicant states that the operator monitors the Premises to ensure that the accessible paths about the Premises remain unobstructed. Specifically, the applicant submitted an operational plan, stating that if and when vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property to park (i.e., side street) until such time an on-site parking stall becomes available; the management company visits the Premises weekly to ensure compliance. Further, the management retains a pest control company to inspect at least monthly. Over the course of hearings, the Board questioned whether the trash enclosure and ice box should be relocated; whether limen levels at the Premises negatively impact nearby properties; and whether a planting strip along the Avenue X property line would better buffer the Premises from nearby properties. In response, the applicant states that the location of the trash enclosure, as previously approved by the Board, has generated no complaints from surrounding neighbors as it is regularly and cleaned and maintained; the applicant submitted photographs to demonstrate the removal of the ice box from ADA parking areas. The applicant submitted a

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lumen level reading plan which demonstrates that the light spill generated from the Premises does not negatively impact nearby residential properties. As to landscaping, the applicant submits that installing a planting strip would not generate a benefit to adjacent residential properties as the Premises borders an approximately 23-foot concrete driveway and the existing six-foot high fence at the Premises provides adequate noise and light buffering in this location.

The Fire Department states, by letter dated January 5, 2021, that a review of their records indicates that the Premises is current with FDNY permits for the storage of combustible liquids, leak detection equipment, underground storage tanks, 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 and time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated June 22, 1954, as amended through June 2, 2016, so that as amended this portion of the resolution shall read: “to extend the term for ten years, to expire on October 23, 2029, and time to obtain a certificate of occupancy for one year, to July 18, 2023, *on condition* that all work, site conditions, and operations shall substantially conform to drawings filed with this application marked “Approved July 18, 2022” —Six (6) sheets; and on further condition:

THAT the term of the variance shall expire on October 23, 2029;

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

THAT there shall be zero (0.0) lumens at the adjacent residential property lines;

THAT trash shall be maintained in an enclosure with steel doors and a corrugated metal roof, maintained in first-rate condition at all times;

THAT all signage shall comply with C2 zoning district regulations;

THAT there shall be no parking on the sidewalk at any time;

THAT asphalt, striping, and plantings shall be maintained at all times in first-rate condition;

THAT attendant(s) shall monitor the property, sidewalk and fuel dispensing operations during normal business hours to ensure vehicles visiting the station and convenience store will only park on site in designated parking stalls and not on the sidewalk;

THAT if vehicles are observed parking on the sidewalk, the vehicle owner shall immediately be notified to move their car to an on-site parking stall or find another location off of the property to park (i.e., side street) until such time an on-site parking stall becomes available;

THAT the Premises shall be monitored at all times to ensure any items that are not staged in undesignated areas (i.e.: ADA accessible paths, handicap parking areas, etc.) and such items shall be removed immediately;

THAT pest control services shall be maintained and the Premises serviced at least monthly to ensure no adverse impacts to surrounding properties;

THAT weekly site monitoring shall be performed to ensure compliance with the resolution and operational plan;

THAT all signage shall comply with the underlying C2-2 zoning district regulations;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 853-53-BZ”), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

433-61-BZ

APPLICANT – Kenny Lee, AIA, for Shin J Yoo, owner.

SUBJECT – Application August 3, 2021– Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations which expired on July 18, 2021: R7A zoning district.

PREMISES AFFECTED – 1702-1712 East 16th Street, Block 6798, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, which permitted the construction of a one-story commercial building (Use Group 6) and expired on July 18, 2021.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the west side of East 16th

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Street between Quentin Road and Avenue R, within an R7A zoning district, in Brooklyn. With approximately 100 feet of frontage along East 16th Street, 48 feet of depth, and 4,792 square feet of lot area, the Premises are occupied by an existing one-story, with mezzanine, commercial building with six retail storefronts.

The Board has exercised jurisdiction over the Premises since July 18, 1961, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story, with mezzanine, retail store building within a residence use district, for a term of 30 years.

Subsequently, under the subject calendar number, the grant was amended and the term extended at various times.

Most recently, on August 7, 2012, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire on July 18, 2021, on further condition that all use and operations substantially conform to plans filed with the application; all signage at the Premises comply with C1 district regulations; the conditions appear on the certificate of occupancy; a new or temporary certificate of occupancy be obtained by August 7, 2013.

The term of the variance having expired, the applicant now seeks an extension.

The applicant represents that no changes to the Premises have occurred or are proposed, and the Premises continue to be occupied as Use Group 6 retail and service uses.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 18, 1961, as amended through August 7, 2012, so that as amended this portion of the resolution shall read: “to extend the term for ten years, to expire on July 18, 2031, *on condition*:

THAT the term of the variance shall expire on July 18, 2031;

THAT all signage shall comply with C1 zoning district regulations;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 433-61-BZ”), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

435-74-BZ

APPLICANT – Eric Palatnik, P.C, for Theresa Townsley, owner.

SUBJECT – Application January 22, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expired on January 14, 2020. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, Block 3804, Lot 18, Borough of Queens.

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 Scibetta5

Negative:0

THE RESOLUTION –

This is an application for an extension of term of a variance, previously granted under Z.R. § 72-21, which permitted the use of the Premises as an automotive repair station (Use Group 16B) and expired on January 14, 2020.

A public hearing was held on this application on November 29, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2022, and then to decision on July 18, 2022. Community Board 2, Staten Island, waives its recommendation of this application. The Board received one form letter in support of this application.

The Premises are located on the southeast corner of Midland Avenue and Freeborn Street, within an R3-1 zoning district, on Staten Island. With approximately 45 feet of frontage along Midland Avenue, 65 feet of frontage along Freeborn Street, and 2,925 square feet of lot area, the Premises are occupied by an existing automotive repair station (1,481 square feet of floor area).

The Board has exercised jurisdiction over the Premises since January 14, 1975, when, under the subject calendar number, the Board granted a variance to permit the reconstruction and rehabilitation of an automotive service station with accessory uses for a term of 15 years.

Subsequently, under the subject calendar number, the grant was amended and the term extended at various times.

On December 19, 2000, under the subject calendar number, the Board granted an extension of term of the variance and granted an amendment to legalize the elimination of the gasoline service use from the Premises.

Most recently, on May 24, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire on January 14, 2020.

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The term of the variance having expired, the applicant now seeks an extension.

The applicant represents that no work is proposed and there are no changes to the bulk, floor area, or egress of the Premises. The Premises operate Monday through Friday, 8:00 a.m. to 6:00 p.m., Saturday, 8:00 a.m. to 3:00 p.m., and closed Sundays. Trash is removed from the Premises Tuesday nights at midnight and is otherwise stored inside the building. The applicant further represents that all repair operations at the Premises occur inside of the building.

Over the course of hearings, the Board directed the applicant to maintain the lighting at the Premises so as to not negatively impact nearby properties.

The Fire Department states, by letter dated November 22, 2021, that a review of records indicates that the Premises is current with Fire Department permits for the storage of combustible liquids and the use of the Premises as a repair shop. 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 *amend* the resolution, dated January 14, 1975, as amended through May 24, 2011, so that as amended this portion of the resolution shall read: “to permit the operation of the Premises as an automotive repair station for a term of 20 years, to expire on January 14, 2040, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Approved July 18, 2022” —Three (3) sheets; and *on further condition*:

THAT no activity related to the subject use shall be conducted on adjacent lots for which no commercial use variance has been granted;

THAT lighting shall be maintained so as to not negatively impact nearby properties;

THAT the dumpster shall be stored inside at all times;

THAT trash shall be removed from the Premises at midnight and otherwise be stored inside the building;

THAT all repair operations at the Premises shall occur inside of the building;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 435-74-BZ”), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

1254-80-BZ

APPLICANT – Jay Goldstein, Esq., for Sephardic Institute for Advanced Learning, owner.

SUBJECT – Application May 26, 2020 – Amendment of a previously approved Variance (§72-21) to permit the enlargement of a previously approved house of worship contrary to underlying bulk requirements. R6A, Special Ocean Parkway District.

PREMISES AFFECTED – 511 Avenue R, Block 394, Lot 15, 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 April 27, 2020, acting on Application Type Alteration 1 No. 321387129, reads in pertinent part:

1. ZR 24-11: The proposed plans are contrary to ZR 24-11, in that the proposed floor area ratio (“FAR”) exceeds the permitted 3.00. Floor area ratio is not complying;
2. ZR 23-11: The proposed plans are contrary to ZR 24-11, in that the proposed lot coverage exceeds the permitted 60%. Lot coverage is not complying;
3. ZR 24-382: The proposed plans are contrary to ZR 24-382, in that no rear yard equivalent is provided. Rear yard is not complying.

This is an application for an amendment of a previously approved variance, pursuant to Z.R. § 72-21, to permit the enlargement of a previously approved house of worship, contrary to underlying bulk requirements for FAR (Z.R. § 24-11), lot coverage (Z.R. § 24-11), and rear yard (Z.R. § 24-382).

A public hearing was held on this application on January 10, 2022, after due notice by publication in *The City Record*, with continued hearings on March 14, 2022, May 9, 2022, and June 7, 2022, and then to decision on July 18, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application.

I.

The Premises are located on the north side of Avenue R, between East 55th Street and Ocean Parkway, within an R6A zoning district and the Special Ocean Parkway District,

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in Brooklyn. With approximately 40 feet of frontage along Avenue R, 121 feet of depth, and 4,288 square feet of lot area, the Premises are occupied by an existing, three-story plus cellar house of worship.

II.

The Board has exercised jurisdiction over the Premises since March 3, 1981, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R5 zoning district and the Special Ocean Parkway District, the erection of a third story on an existing two-story private school and synagogue that increases the degree of non-compliance in floor area ratio, open space ratio, encroachment into the required front yard, side yard, and rear yard equivalent, sky exposure plane penetration, and the parking requirement on condition that all work substantially conform to drawings as they apply to the objection noted and filed with the application; no Building Department permit be issued until 31 days after the date of certification of this resolution, on April 3, 1981; all laws, rules, and regulations applicable be complied with; and substantial construction be completed in accordance with Z.R. § 72-21.

On December 16, 2008, under BSA Cal. No. 51-08-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, on a site within an R6A zoning district, with the Special Ocean Parkway District, a six-story and mezzanine synagogue (Use Group 4), which does not comply with lot coverage, floor area ratio, required rear yard equivalent, height, front setback, and open space, contrary to Z.R. §§ 24-11, 24-382, 24-522, and 23-633, on condition that any and all work substantially conform to drawings as they apply to the objections noted and filed with the application; the building parameters include an FAR of 4.85, a street wall height of 78'-0", a total height of 95'-6", a lot coverage of 99.7 percent, an open space of 0.3 percent, no rear yard equivalent, and no front yard setback; any change in control or ownership of the building require the prior approval of the Board; the above conditions be listed on the certificate of occupancy; DOB confirm that the building complies with all Building Code and safety measures; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans shall be considered approved only for the portions related to the specific relief granted; construction proceed in accordance with Z.R. § 72-23; and the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

III.

The applicant states that, in order to meet the changing programmatic needs of the existing house of worship, it seeks to construct a fourth floor on top of the existing three-story plus cellar building. Additionally, the applicant seeks to lower the level of the cellar and to reconfigure the space so as to allow for additional worship space. Currently, the applicant represents that it has a membership of

approximately 295 households, comprised of 1,179 people: 547 adults, 100 children below 13 years of age, 214 children between the ages of 13-18, and 318 young adults over the age of 18 and seeks the instant variance to accommodate approximately 749 individuals. The applicant submits that its programmatic needs include: (1) sufficient space for the Congregation's various prayer services; (2) space for lectures, large group study and small group study; (3) space for youth programming for the children; (4) a library/study; (5) offices; and (6) a multi-purpose room to be used as a space for the younger children to play during services and for special occasions for members of the house of worship.

The applicant represents that the proposed building would have four stories and a cellar, a total height of 43'-10", a floor area of 16,812.92 square feet, and 3.92 FAR. The applicant declares that the building would not provide any side or front yards, as none are required pursuant to Z.R. § 23-382, nor parking, as it is not required under Z.R. § 25-31. Furthermore, the applicant states that the proposed project would maintain the existing non-compliant lot coverage and rear yard equivalent. The applicant further states that the building would be fully sprinklered and equipped with a fire alarm system and would comply with all requirements for fire-rated protected walls, openings, ceilings, and roof assemblies. The applicant represents that the building would meet all ADA requirements, including an ADA-accessible elevator that will stop at all floors, and an accessible bathroom located at the cellar level.

In the subject R6A zoning district, a maximum of 3.0 FAR is permitted, as per Z.R. § 24-11; a maximum lot coverage of 60% is permitted, as per Z.R. § 24-11; and a rear yard equivalent is required for through lots comprised of either an open area with a minimum depth of 60' halfway between the two streets directly bordering the lot; two 30'-deep open areas, each running the length of the adjacent street line, or a 30'-wide open area running the length of each side lot line, as per Z.R. § 24-382.

IV.

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.

A.

First, the applicant resubmits that as a threshold matter, a religious use is legally entitled to deferential and protective treatment in zoning matters because of its unique contribution to the public welfare. The applicant represents that, as a general rule, religious and educational institutions are presumed to have a beneficial effect on the communities in which they are located. In New York, religious institutions and schools occupy a special status under the zoning law. *Diocese of Rochester v. Planning Board of Town of Brighton*, 1 N.Y.2d 508, 523 (1956) ("when the church enters the picture, different considerations apply"). This presumption may be rebutted only by a showing that the proposed use would have a net negative impact on public health, safety, welfare, and morals. *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986). In the instant

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case, the applicant states that strict adherence to the underlying bulk regulations at the subject site would pose significant practical difficulty and unnecessary hardship in light of the programmatic needs of the house of worship. 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.

B.

Next, the applicant resubmits, and the Board still concurs that, because this application proposes a not-for-profit religious organization, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further represents that the requested amendment to the 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 the proposed use is as-of-right in the subject residential district and has been operating from its current location since the 1970s. The applicant posits that the population to be serviced by the enlarged building is already traveling to the Premises, and therefore, the proposed enlargement would not result in a pedestrian or vehicular surge. Moreover, the applicant represents that the proposed bulk of the building would not alter the character of the neighborhood nor impair the use or development of adjoining properties. For example, the applicant describes that the proposed 43'-10" height of the building is within that which is permitted in the underlying R6A zoning district. Additionally, the applicant states that the proposed building height is significantly shorter than the heights of the surrounding buildings; the proposed front wall, without setbacks for rear yard equivalent, matches the underlying zoning, which has no front yard requirements; and matches the surrounding buildings, all of which are located at the front lot line with no setbacks. In support of this contention, the applicant submitted photographs of the subject block and proposed streetscape plans.

Accordingly, the Board finds that the proposed amendment 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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties encountered on this site are inherent in the unique needs of the house of worship and are not self-created.

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 notes that the amendment to the variance is the minimum necessary to further continue the use residence at the Premises. The applicant submits that as it seeks to continue and expand its current operation, the existing bulk parameters of the building would not permit an as-of-right enlargement of the Premises that would result in a structure sufficient to meet its programmatic needs. Therefore, without the requested waiver, the applicant states that it could not meaningfully enlarge the building, frustrating its programmatic needs. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

V.

Over the course of hearings, the Board raised concerns regarding the appropriateness of the proposed fourth-floor setback within the neighborhood context; clarity of the Room Utilization and Growth Chart, which did not specify proposed uses and times for the rooms at the subject site; discrepancies on the proposed plans which lacked updates to the building exterior and egress, indication of the permitted building envelope, the pre-existing non-complying conditions, proposed trash storage space and HVAC system detailing.

In response to these concerns, the applicant submitted updated plans, which include the location of the trash space in the cellar, an HVAC system with a barrier detailing. Additionally, the applicant submitted an amended Room Utilization and Growth Chart that shows the use that would occupy certain rooms at the subject site.

VI.

By letter dated May 19, 2022, the New York City Department of Environmental Protection ("DEP") states that it has reviewed the applicant's May 2022 Technical Memorandum and has the following conclusion:

Air Quality:

An air quality analysis was performed as per the City Environmental Quality Review Technical Manual. The HVAC and hot water for the proposed project will exclusively use natural gas and the system will be fitted with low NOx (30 ppm) burners. The assessment with these conditions shows that the proposed project would not result in a significant adverse air quality impact.

By letter dated March 25, 2022, the New York City Landmarks Preservation Commission ("LPC") states that the subject site has no architectural significance and no archaeological significance.

Based upon its review of the record, the Board has determined that the proposed enlargements to the existing building are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated March 3, 1981 as amended through December 16, 2008, so that as amended this portion of the resolution shall read: "to permit

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the enlargement of the existing three-story plus cellar building; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Approved July 18, 2022 – Fifteen (15) sheets’; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: 16,812.92 square feet (3.92 FAR); a lot coverage of 97.40%; and no rear yard equivalent;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (‘BSA Cal. No. 1254-80-BZ’), shall be obtained within two years, by July 18, 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, July 18, 2022.

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, 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 Scibetta5
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 under Z.R. § 72-21, which permitted the legalization of a two-story with cellar commercial building and expired on July 2, 2020.

A public hearing was held on this application on December 13, 2021, after due notice by publication in *The City Record*, with continued hearings on February 7, 2022, and March 28, 2022, and then to decision on July 18, 2022.

Community Board 1, Staten Island, recommends approval of this application.

The Premises are located on the west side of Clove Road, between Tioga Street and Oswego Street, within an R3X zoning district, on Staten Island. With approximately 41 feet of frontage along Clove Road, a depth ranging between 90 feet and 80 feet, and 3,452 square feet of lot area, the Premises are occupied by an existing two-story with cellar commercial building.

The Board has exercised jurisdiction over the Premises since July 25, 1985, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the enlargement and legalization of a one-story, cellar and attic, commercial building to a two-story with cellar commercial building that does not conform to underlying use regulations, contrary to Z.R. § 22-00, on condition that the variance be limited to a term of five years; smoke detectors and a fire/security alarm system with a central office connection be provided as on plan; signs be limited to one non-illuminated sign not greater than six square feet; the cellar area be used for storage only; landscaping be provided as shown on plans and be adequately maintained and replaced when necessary; lights for the parking area be provided as shown on plan; sprinklers off the domestic in the cellar storage area and stairways be provided as shown on plan; hours of operation be limited to Monday through Friday, 9:00 a.m. to 5:00 p.m., and Saturday, 1:00 p.m. to 5:00 p.m.; 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; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed in accordance with Z.R. § 72-23.

On January 22, 1991, under the subject calendar number, the Board amended the variance to extend the term for ten years, to July 2, 2000, and to legalize the enlargement of the second floor for offices, a change in the interior layout, the extension of use of offices into the cellar level in lieu of a storage area as previously approved, change in design of the front façade of the building, relocation of the curb cut, and existing sign condition, all as shown on plans filed with the application, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one year.

On March 19, 2002, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to July 2, 2010, on further condition that the Premises be kept clean of debris and graffiti; all lighting be pointed away from residential dwellings; landscaping be provided and maintained in accordance with BSA-approved plans; all signs be maintained in accordance with approved plans, and the Premises be maintained in substantial compliance with Board-approved plans.

On February 15, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the

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term for ten years, to expire on July 2, 2020.

The term of the variance 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 continue to operate as a commercial office and maintain the same hours of operation, and the Premises substantially complies with the prior Board approvals. However, the applicant states that the trash dumpster is not screened: a custom metal fence and gate are proposed to screen the dumpster from view; the originally approved landscaping between the parking area and the front walkway was removed and relocated—a new strip for shrubs is proposed in that area; a third shed has been placed in the rear that is noted to be removed; the previously existing non-illuminated sign has been changed to a non-illuminated double faced sign of 21.2 square feet and a new illuminated sign has been installed to replace the previous one; lastly, the landscaping specified for the north lot line does not currently exist but has been specified on plans.

Additionally, the applicant requests elimination of the term of the variance.

Over the course of hearings, the Board noted that the Premises had been cleaned up and improvements to the Premises were completed to the satisfaction of the Board.

The Fire Department states, by letter dated June 10, 2021, that the Premises are protected by a fire suppression system (sprinkler) and fire alarm system that has been tested and witnessed by members of the Bureau of Fire Prevention and permits are current. 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 elimination 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 July 25, 1985, as amended through February 15, 2011, so that as amended this portion of the resolution shall read: "to permit the use of the Premises as commercial offices, with no term, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Approved July 18, 2022" —Eight (8) sheets; and *on further condition*:

THAT the Premises shall be kept clean of debris and graffiti;

THAT all lighting shall be pointed away from residential dwellings;

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

THAT signage shall be maintained in accordance with BSA-approved plans;

THAT a trash enclosure shall be maintained in accordance with BSA-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 758-84-BZ"), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

171-97-BZIII

APPLICANT – Gerald J. Caliendo, RA, AIA, for Rocco Sacco, owner.

SUBJECT – Application August 31, 2021 – Extension of Term of a previously approved variance which permitted the operation of a trade school (UG 9), eating and drinking establishment (UG 6), retail (UG 6) and accessory uses which expired on October 20, 2018; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 65-01 Kissena Boulevard, Block 6742, Lot 10, 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

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 under Z.R. § 72-21, which permitted the use of the Premises as a trade school (Use Group 9), eating and drinking establishment, retail (Use Group 6), and accessory uses and expired on October 20, 2018.

A public hearing was held on this application on January 25, 2022, after due notice by publication in *The City Record*, with a continued hearing on May 23, 2022, and then to decision on July 18, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 8, Queens, recommends approval of this application.

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The Premises are located on the southeast corner of Kissena Boulevard and 65th Avenue, within an R4 zoning district, in Queens. With approximately 81 feet of frontage along Kissena Boulevard, 112 feet of frontage along 65th Avenue, and 8,620 square feet of lot area, the Premises are occupied by an existing two-story, with cellar, commercial building used for day care (Use Group 3), retail (Use Group 6), eating and drinking establishment (Use Group 6), trade school (Use Group 9) and accessory uses.

The Board has exercised jurisdiction over the Premises since July 16, 1946, when, under BSA Cal. No. 263-46-BZ, the Board permitted a gasoline service station, automotive repair shop, lubricatorium, garage, and retail store at the Premises. Subsequently, under BSA Cal. No. 263-46-BZ, the grant was amended at various times.

On March 16, 1971, under BSA Cal. No. 1066-67-BZ, the Board permitted, under Z.R. § 11-412, in an existing one-story structure occupied as an automotive service station, repair shop, and bookstore, the erection and enlargement to the bookstore.

On October 20, 1998, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the proposed conversion of an existing building from an existing building from an eating and drinking establishment (Use Group 6) and automotive repair (Use Group 16), to an eating and drinking establishment, retail store and office space (Use Group 6), contrary to Z.R. §§ 52-22 and 52-40, on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the hours of operation of the Premises be: eating and drinking establishment: Monday through Sunday, 10:00 a.m. to 11:00 p.m.; bookstore: Monday through Friday, 8:00 a.m. to 10:00 p.m., Saturday, 9:00 a.m. to 9:00 p.m., Sunday, 9:00 a.m. to 6:00 p.m.; and, offices: Monday through Saturday, 8:00 a.m. to 9:30 p.m., and Sunday, 8:00 a.m. through 6:00 p.m.; the office space on the second floor of the Premises be used for educational related uses only; all deliveries and refuse pick-up take place during business hours only; the Premises remain graffiti free at all times; all HVAC equipment be pointed away from abutting residential uses; the term of the variance be for 20 years to expire on October 20, 2018; 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; substantial construction be completed in accordance with Z.R. § 72-23; and, a new certificate of occupancy be obtained.

On August 14, 2001, under the subject calendar number, the Board amended the resolution to permit changes in use from retail store (Use Group 6) to trade school (Use Group 9) and accessory uses on the first floor; a change from offices (Use Group 6) to trade school (Use Group 9) and allow a change of use in the cellar from storage for the retail store (Use Group 6) to trade school (Use Group 9); on further condition that the Premises shall be maintained in substantial compliance with the Board-

approved plans submitted with the October 20, 1998, resolution; other than as amended, the resolution be complied with in all respects; and, a certificate of occupancy be obtained within eighteen months of the date of the amended resolution.

By letter dated February 11, 2003, the Board permitted the addition of day care (Use Group 3) on the first floor of the Premises as in substantial compliance with the variance.

By letter dated December 14, 2004, the Board permitted the addition of three additional day care rooms on the cellar level and one additional day care room on the first floor of the Premises as in substantial compliance with the variance.

The term of the variance having expired, the applicant now seeks a 20-year extension. Because this application was filed more 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)(3)(ii), of the Board's Rules to permit the filing of this application.

The applicant represents that the Premises continue to be occupied in accordance with the Board's 2004 letter of substantial compliance. Specifically, the Premises are occupied as follows: cellar level: two retail stores (Use Group 6), accessory storage, accessory preparation area for eating and drinking establishment (Use Group 6); day care with two classrooms (Use Group 3); first floor: eating and drinking establishment (Use Group 6), day care (Use Group 3), six classrooms and accessory office loading area, parking; accessory spaces used by the trade school on the first floor such as lobby, elevator and stairway; second floor: trade school (Use Group 9) and accessory uses (offices, library, ten classrooms, computer rooms).

The applicant adds that, in response to comments over the course of hearings, it was determined that professional offices (Use Group 6) would be appropriate on the second floor if the property owner faced a challenge in leasing to a trade school (Use Group 9) and, therefore, the applicant revised the proposed plans to indicate Use Group 6 in the appropriate spaces as an alternative use.

Further, in response to Board comments regarding the potential to locate refuse storage inside the Premises as an indoor trash compactor, the applicant submits that the current refuse setup is the most feasible method at the Premises. Specifically, the applicant submits that an indoor trash compactor would cost in excess of \$100,000 and would not benefit this location as refuse would still need to be stored outdoors; an indoor trash compactor would also require structural changes to the floors to support the compactor and the stairs would have to be widened so it may be installed. Further, an indoor trash compactor would also use excess space and would hamper current restaurant operations by reducing needed work and prep areas. Any other gates including a sliding gate would require a floor track and top rail which would block the sidewalk further and would also block the entrance of the pizzeria. Therefore, the applicant states that the current refuse setup is the best and most practical method for this location. Additionally,

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the applicant submits that the trash enclosure and fencing will be installed within the property line of the Premises; once the fencing for the refuse storage area is relocated within the property line, there will be a 10'-5"-wide clear area between the refuse storage area and the edge of the sidewalk. The Board notes that the applicant shall continue to improve the refuse storage area. Improvements may include installing a small compactor in the restaurant to reduce the amount of trash being stored on the street enclosure; reducing the width of the enclosure area; changing to a sliding gate; and, better rodent-proof enclosures. The Board further notes that modifications to the Premises to improve refuse storage conditions may be approved by letter.

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, 1998, as amended through August 14, 2001, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years, to expire on October 20, 2038, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Approved July 18, 2022" —Nine (9) sheets; and *on further condition*:

THAT the term of the variance shall expire on October 20, 2038;

THAT the applicant shall continue to improve the refuse storage area;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 171-97-BZ"), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

180-98-BZII

APPLICANT – Law Office of Jay Goldstein, for Swaraj Property, LLC, owner.

SUBJECT – Application September 22, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of (UG 6) retail which expired on December 8, 2018; Amendment to reflect minor changes; Waiver of the Board's Rules of Practice and Procedures. R2 zoning district.

PREMISES AFFECTED –163-10 Pidgeon Meadow Road aka 163 Place, 47-10 164th Street, Block 5494, Lot 8, 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 Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated August 24, 2020, acting on DOB Alteration Application No. 421860418, reads in pertinent part: "The proposed amendment is contrary to BSA Calendar Number 180-98-BZ and must be referred to the Board of Standards and Appeals." This is an application for a waiver of the Board's Rules of Practice and Procedures, an extension of term of a variance, under Z.R. § 11-411, which permitted the use of the Premises as a retail store (Use Group 6) and expired on December 8, 2018, and an amendment to permit minor alterations to the Premises.

A public hearing was held on this application on May 10, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 7, Queens, recommends approval of this application on condition that parking space #7 be removed and the term be for 15 years instead of 20 years.

The Premises are bounded by Pidgeon Meadow Road to the north, 163rd Place to the west, and 164th Street to the east, within an R2 zoning district, in Queens. With approximately 116 feet of frontage along Pidgeon Meadow Road, 146 feet of frontage along 163rd Place, 52 feet of frontage along 164th Street, and 6,956 square feet of lot area, the Premises are occupied by an existing one-story commercial building (1,450 square feet of floor area) used as a retail store (Use Group 6) and nine accessory off-street parking spaces.

The Board has exercised jurisdiction over the Premises since 1956 when, under BSA Cal. No. 692-53-BZ, the Board approved the use of the Premises for a gasoline service station, lubricatorium, car wash, motor vehicle repair facility, and storage and sales of automobiles.

On December 8, 1998, under the subject calendar number, the Board granted a change in use of the Premises, under Z.R. § 11-413, to a retail store (Use Group 6), on

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condition that the Premises remain debris and graffiti free at all times; the hours of operation be limited to 6:00 a.m. to 10:00 p.m.; garbage pick-up occur only from 6:00 a.m. to 9:00 p.m.; the term of the variance be limited to 20 years, to expire on December 8, 2018; 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, a certificate of occupancy be obtained within one year.

The term of the variance 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 continue to be operated in compliance with the terms of the Board's approval and, specifically, garbage removal occurs only on Tuesdays and Saturdays between the hours of 6:00 a.m. and 8:00 a.m. The applicant adds that tax lot 7 screens the Premises from nearby properties proposed with a dense landscaped buffer of 15 arborvitae and 7 sky pencil shrubs, with additional planting in between and along the western side of tax lot 7.

Further, in response to Board and community board comments, the applicant demonstrated repaired fencing around the A/C units along 163rd Place, reoriented one parking space to be closer to the car vacuum and air dispenser, and relocated parking space #7 away from the dumpster to create better circulation. Accordingly, the applicant seeks a ten-year extension of the term.

The applicant additionally seeks to permit minor modifications to the Premises. These modifications include adding a vacuum station and tire air dispenser station shielded by the existing wall and proposed planting; relocation of the dumpster to further shield it from the surrounding area; the addition of an exhaust fan to the wall of the building; changes to the interior layout of the retail store; and, calculation updates to the lot area, floor area, and open space.

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 December 8, 1998, 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 8, 2028, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Approved July 18, 2022" — Ten (10) sheets; and *on further condition*:

THAT the term of the variance shall expire on December 8, 2028;

THAT the air vacuum shall be turned off when the

Premises are closed;

THAT planting shall be maintained in accordance with the BSA-approved plans, replaced as necessary to be maintained in first-rate condition;

THAT no commercial uses or accessory uses shall be permitted on the adjacent, tax lot 7, landscaped area;

THAT trash shall be stored inside an enclosure at all times;

THAT asphalt shall be maintained in first-rate condition;

THAT signage shall comply with C1 zoning district regulations;

THAT the Premises shall remain debris and graffiti free at all times;

THAT the hours of operation shall be limited to 6:00 a.m. to 10:00 p.m.;

THAT garbage pick-up shall occur only from 6:00 a.m. to 9:00 p.m.;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 180-98-BZ"), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

268-03-BZIII

APPLICANT – Vassalotti Associates Architects, LLP, for Park Circle Realty Associates, owner.

SUBJECT – Application October 13, 2021 – Extension of Term (§11-411) for the continued operation of an automotive service station which will expire on January 27, 2024; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 145-55 Guy Brewer Boulevard, Block 13313, Lot 40, 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 –

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This is an application for a waiver of the Board's Rules of Practice and Procedures and extension of term of a variance, under Z.R. § 11-411, which permitted the use of the Premises as an automotive service station and will expire on January 27, 2024.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Community Board 13, Queens, recommends approval of this application on condition that new planters be put around the gas station for beautification; the applicant work with Community Board 13, Queens, to maintain the existing planters at the corners of the intersection of Farmers Boulevard and Guy R. Brewer Boulevard; the existing trash dumpster be enclosed with a new six-foot-high chain link fence with privacy slats; new lighting be installed along the northern lot line by the trash container and car wash machines; signage be placed along the pump islands alerting customers to turn down/off their radios; and, there be daily/weekly maintenance and cleanup activities, as needed, around the Premises, especially around the clothes bin, car wash, and trash dumpster area.

The Premises are located on a triangular-shaped lot at the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, within an R3-2 (C1-2) zoning district, in Queens. With approximately 194 feet of frontage along Guy R. Brewer Boulevard, 140 feet of frontage along Farmers Boulevard, and 11,212 square feet of lot area, the Premises are occupied by an existing automotive service station with a accessory kiosk building (approximately 150 square feet of floor area).

The Board has exercised jurisdiction over the Premises since March 23, 1954, when, under BSA Cal. No. 704-53-BZ, the Board granted an approval authorizing the use of the Premises as an automotive service station. The approval under BSA Cal. No. 704-53-BZ expired on April 19, 1998, and was not renewed.

On January 27, 2004, under the subject calendar number, the Board granted a variance, under Z.R. §§ 11-411 and 11-412, to permit the re-establishment of the automotive service station, previously granted under BSA Cal. No. 704-53-BZ, and to permit the legalization of an existing air station, vacuum, and beverage machines, and to permit a modification to the existing signage, contrary to Z.R. § 32-35, for a term of ten years, expiring January 27, 2014, on condition that signage be provided in accordance with BSA-approved plans; there be no used car sales on the Premises at any time; there be no lubrication or repair of cars on the Premises at any time; fencing and screening be provided in accordance with BSA-approved plans; lighting be provided in accordance with BSA-approved plans and be positioned down and away from any adjacent residential uses; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; the conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained within two years; 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.

On July 14, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term of the variance for ten years, to expire on January 27, 2024, and to allow changes to the site plan of the Premises on further condition that signage comply with C1 zoning district regulations, the conditions and conditions from prior approvals be noted on the certificate of occupancy, and a certificate of occupancy be obtained by July 14, 2016.

The time to obtain a certificate of occupancy to expire January 27, 2024, 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 the Premises continues to be occupied by and operated as an automotive service station and operates 24 hours per day, seven days per week, with five pump islands and six total MPD dispensers. The applicant represents that the Premises is operated to ensure no parking of vehicles on the sidewalk or in any manner as to obstruct pedestrian and vehicular traffic.

In response to Board and community concerns, the applicant provided photographs of signage installed at the pump islands directing customers to turn down their radios

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 27, 2004, as amended through July 14, 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 January 27, 2034, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Approved July 18, 2022"—Three (3) sheets; and *on further condition*:"

THAT new planters shall be installed around the gas station for beautification;

THAT the applicant shall work with Community Board 13, Queens, to maintain the existing planters at the corners of the intersection of Farmers Boulevard and Guy R. Brewer Boulevard;

THAT the existing trash dumpster shall be enclosed with a new six-foot-high chain link fence with privacy slats;

THAT new lighting shall be installed along the northern lot line by the trash container and car wash machines;

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THAT signage shall be placed along the pump islands alerting customers to turn down/off their radios;

THAT there shall be daily/weekly maintenance and cleanup activities, as needed, around the Premises, especially around the clothes bin, car wash, and trash dumpster area;

THAT the term of the variance shall expire on January 27, 2034;

THAT all signage shall comply with C1 zoning district regulations;

THAT there shall be no used car sales on the Premises at any time;

THAT there shall be no lubrication or repair of cars on the Premises at any time;

THAT fencing and screening shall be provided in accordance with BSA-approved plans;

THAT lighting shall be provided in accordance with BSA-approved plans and shall be positioned down and away from any adjacent residential uses;

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

THAT any graffiti located on the Premises shall be removed within 48 hours;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 268-03-BZ”), shall be obtained within one year, by July 18, 2023;

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

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

THAT the Department of Buildings must 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 18, 2022.

6-04-BZIII

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, 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 –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”); extension of term of a previously approved variance, granted pursuant to Z.R. § 72-21, permitting the operation of a health and fitness establishment (“HFE”) (Use Group (“UG”) 6) and accessory offices and expired on April 12, 2017; and an amendment to the hours of operation and conditions of the prior grant.

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, with continued hearings on October 18, 2021, February 7, 2022, and May 9, 2022, and then to decision on July 18, 2022. Community Board 10, Brooklyn, recommends approval of this application with the following conditions:

1. That the applicant keep the sidewalk along 72nd Street that abuts the property clean;
2. That the applicant provides CB10 with annual affidavit by a responsible officer showing that they are in compliance with the approved variance.

The Premises are located at the southeast corner of the intersection of Third Avenue and 72nd Street, partially within a C1-3 (R6B) zoning district, partially within an R5B zoning district and in the Special Bay Ridge District, in Brooklyn. With approximately 100 feet of frontage along Third Avenue, 200 feet of frontage along 72nd Street, and 20,000 square feet of lot area, the Premises are occupied by an existing three-story commercial building.

The Board has exercised jurisdiction over the Premises since April 12, 2005, when, under the subject calendar number, the Board granted a variance, for a term of two years, to permit, in a C1-3 (R6) zoning district, a proposed physical culture establishment (“PCE”) use on the second and third floors of an existing commercial building, contrary to Z.R. §§ 22-00 and 32-00, on condition that all work substantially conform to drawings as they apply to the objections noted and filed with the application; the term of the variance will be for two years, from April 12, 2005 to April 12, 2007; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the hours of operation be limited to 6 a.m. to 11 p.m. Monday through Friday, and 8 a.m. to 8 p.m., Saturday and Sunday; there be no parking in the courtyard and signs be posted to that effect; the pedestrian gate to the courtyard be no greater than 40 inches in width; the above conditions appear on the certificate of occupancy; there be no curb cut on 72nd Street; all fire protection measures indicated on the BSA-approved plans be installed and maintained, as approved by DOB; all exiting requirements be as reviewed and approved by the Department of Buildings; this approval

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is 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.

On March 4, 2008, under the subject calendar number, the Board amended the resolution to permit an extension of the variance for a term of 10 years from the expiration of the last grant, to expire on April 12, 2017, on condition that the use and operation of the PCE shall substantially conform to BSA-approved plans; all work substantially conform to drawings filed with the application; there be no change in ownership or operating control of the PCE without approval from the Board; this grant be limited to a term of 10 years, to expire on April 12, 2017; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and the Department of Building ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the grant having expired, the applicant now seeks an extension and to amend the terms of the prior grant. Because this application was filed less than one year after but more than 30 days after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that the subject HFE is now located on the first, second, and third floors of the building. First, the applicant seeks to remove two prior conditions of the grant: 1) the removal of the curb cut as this removal has already occurred and is no longer applicable and 2) no parking in the rear yard as the gate at the Premises is 40 inches wide and parking is physically inaccessible. Additionally, the applicant seeks to modify the hours of operation to Monday through Thursday: 5:30 a.m. to 11:00 p.m., Friday: 5:30 to 10:00 p.m., and Saturday and Sunday: 8:00 a.m. to 8:00 p.m. The applicant represents that as the facility is located in an entirely commercial building, the requested modifications would not have any potential adverse impact on nearby or adjacent commercial uses.

By letter dated February 6, 2021, the Fire Department states that it has reviewed the application and states the occupant load as stated on the Schedule "A" filed under Alt. I 301499484 for the second floor is 276 persons and the third floor for 164 persons, for a total of 440 persons. According to the certificate of occupancy 237027, issued by the Department of Buildings on (approximately) August 29, 1991, these Premises have a fire alarm system for the use

described as Club Room, Meeting Hall (Bingo) and Theatre. Such fire alarm system for a physical culture establishment does not meet the current Building Code requirements. As per the Administrative Code Section 28-1014.3, optional use of the 1968 Building Code for work on prior code buildings, at the option of the owner, and subject to applicable provision of this code, work on prior code buildings may be performed in accordance with the requirements and standards set forth in the 1968 Building Code, or where the 1968 Code so authorizes, the code in effect prior to December 6, 1968.

Exceptions:

2. Fire Protection Systems: Alteration of buildings and changes of use shall be governed by Chapter 9 of the New York City Building Code, subject to special provisions for prior code buildings as set forth therein.

Therefore, since an amended certificate of occupancy has never been issued for the change of use for the second and third floors for a physical culture establishment, compliance with Chapter 9 of the NYC Building Code shall be met. Plans and applications are to be filed for a new fire alarm system with the NYC Fire Department Fire Alarm Plan Review Unit. New fire alarm system shall be in compliance with Chapter 9 of the NYC Building Code.

In addition, the Bureau of Fire Prevention's Licensed Public Place of Assembly ("LPPA") unit has inspected these Premises and issued Violation Order #E562521, for failure to obtain a Public Assembly permit from the Department of Buildings. According to the DOB Building Information System, a Public Assembly application #320299388, was reviewed and disapproved on August 28, 2012.

The Fire Department understands the procedural requirements for the applicant to obtain approvals of the Alteration Type 1 and Public Assembly application from the Department of Buildings, which is to obtain a special permit from the Board of Standards and Appeals.

We respectfully request that the Board of Standards and Appeals does not issue such special permit until after an application for a new fire alarm system has been filed with the Fire Department. These Premises are protected by a fire suppression system (standpipe and sprinkler), which has been tested and inspected by the owner's suppression contractor and witnessed by the Fire Department.

Based upon the foregoing, the Fire Department objects to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

At hearing, the Board raised concerns about the conditions at the site including visible graffiti on the rear yard gate, the elevator at the site, and the required filing of a Fire Alarm plan with the FDNY as per its letter of objection. Furthermore, the Board states that the variance is limited the health and fitness establishment (UG 6) and accessory offices only. In regard to the elevator at the site, the BSA takes no position on the elevator's placement or legality, a matter which is reserved for the Department of Buildings. In response to the Board's concerns, the applicant submitted a

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receipt of its filing of a Fire Alarm Plan with FDNY which included a project description and photographs of the repainted rear yard gate panel.

Based upon its review of the record, the Board has determined that the requested extension of term and amendment to the conditions of the grant, 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 12, 2002 as amended through March 4, 2008, so that as amended this portion of the resolution shall read: “to extend the term of the grant for ten years, to expire on July 18, 2032, limit the use at the subject Premises to a UG 6 health and fitness establishment, and amend the hours of operation, *on condition* that all work, site conditions, and operations shall conform to the drawings filed with this application marked ‘Board Approved: July 18, 2022 – Six (6) sheets’; and *on further condition*;

THAT the term of the grant shall be limited to ten years, to expire on July 18, 2032;

THAT the hours of operation shall be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.;

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

THAT there shall be no curb cut on 72nd Street;

THAT all fire protection measures indicated on the BSA-approved plans shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved 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. 6-04-BZ”), shall be obtained within two years, by July 18, 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, July 18, 2022.

120-13-BZIII

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 – Application granted on condition.

THE VOTE –

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

Negative:.....5

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”) and an extension of term for a special permit previously granted by the Board, pursuant to Z.R. §§ 73-243 and 73-03, which permitted an accessory drive-thru to an eating and drinking establishment (Use Group (“UG”) 6) and expired on January 14, 2019.

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 March 24, 2020, July 27, 2020, October 19, 2020, November 30, 2020, February 22, 2021, April 26, 2021, and then to decision on July 18, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and the surrounding neighborhood. The Board received 45 letters of objection with accompanying photographs and videos from an organized group of residential neighbors, citing concerns over noise from the use at the site, emissions emanating from queuing vehicles, and light spread onto the adjacent residential properties.

The Premises are an irregularly shaped lot located on the north side of Forest Avenue, between Hudson Place and Morningstar Road, within a C1-1 (R3-2) zoning district, in Staten Island. With approximately 125 feet of frontage along Forest Avenue, 170 feet of frontage along Morningstar Road, and 42,788 square feet of lot area, the Premises are occupied by a one-story, UG 6, eating and drinking establishment (McDonald’s).

The Board has exercised jurisdiction over the Premises since January 14, 2014, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-243 and 73-03, to permit, within a C1-1 (R3-2) zoning district, the operation of an accessory drive-thru facility on the site in conjunction with an as-of-right eating and drinking establishment (UG 6), contrary to Z.R. § 32-15, on condition that all work substantially conform to drawings as they apply to the objections noted and filed

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with the application; the term of the grant expire on January 14, 2019; the Premises be maintained free of debris and graffiti; parking and queuing space for the drive-thru be provided as indicated on the BSA-approved plans; all landscaping and/or buffering be maintained as indicated on the BSA-approved plans; exterior lighting be directed away from the nearby residential uses; the signage conform to C1-1 zoning district regulations; the hours of garbage collection be limited to daily, between 8:00 a.m. and 10:00 p.m.; the above conditions appear on the certificate of occupancy; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings must ensure compliance 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 and amendment to eliminate the term of the grant. Because this application was filed within one year after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(b)(1), of the Board's Rules to permit the filing of this application.

The applicant represents that since the prior grant, there have been minor, non-structural changes that do not affect the previously approved means of egress, and the building has remained in substantial compliance with the Board's original grant. Specifically, the applicant notes the following changes: 1) one additional sign was installed on the east elevation; 2) one sign is not illuminated; 3) sign on the western elevation was never installed; 4) a door was installed at the rear of the building (north elevation); 5) interior layout of the dining space differs from the approved plans; 6) landscaping at the rear of the building and street frontage facing Morningstar Road differs from BSA-approved plans; 7) street tree on Morningstar Road was not planted but applicant represents that payment was submitted to the NYC Department of Parks and Recreation's street tree fund; and 8) Parking ADA signage differs from BSA-approved plans.

By letter dated February 1, 2020, the Fire Department states that inspections had been performed by several units in the Bureau of Fire Prevention and they were the Fire Alarm Inspection Unit ("FAIU") and Rangehood Unit ("RHU"), and these Premises were found to be in compliance with the rules and regulations of the department and permits are current. The Bureau's Licensed Public Place of Assembly had also inspected these Premises and issued Violation Order #E469646 on October 14, 2016 for failure to obtain certificate of operations for public assembly from the Department of Buildings. A Public Assembly application (PA# 520204216) was filed and approved on July 21, 2015. The certificate of operations (PA permit) was never issued. Based upon the foregoing, the Department objects to the application. The Department would recommend that the Board of Standards and Appeals have

the applicant obtain a PA permit prior to rendering a decision on this application.

Over the course of hearings, the Board raised concerns about the condition of the site and directed the applicant to conduct environmental studies such as noise, lumens' spread, and air quality and input changes to the site to address the numerous issues as observed and documented by the residential neighbors. In response to the complaints regarding noise at the site, the applicant submitted updated plans demonstrating the addition of an acoustical blanket on a section of the existing chain link fence along the western property line; photographs of installation of the noise attenuation methods as per the BSA-approved plans photos of the heavy-duty acoustical barrier system with footing; and reduced the hours of operation of the subject drive thru to 7 a.m. to 9 p.m. In response to the complaints regarding air quality at the site, the applicant conducted an air quality study over a 24-hour period which showed that no measurable impact of the idling cars on air quality at residential property line or the drive thru. In response to the concerns about the light spread onto the adjacent residential property, the applicant agreed to submit an updated lumens spread diagram to demonstrate that the lighting would not extend past the property line and use transparent material as opposed to solid material for the fencing along Morningstar Road so that the height of the acoustical enclosure would not obstruct the view.

Based upon its review of the record, the Board has determined that the extension of term of the special permit 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 14, 2014, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for five years, to expire on July 18, 2027, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked 'Approved July 18, 2022' — Eleven (11) sheets; and *on further condition*:

THAT the Premises shall be maintained free of debris and graffiti; THAT parking and queuing space for the drive-through be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering be maintained as indicated on the BSA-approved plans;

THAT exterior lighting be directed away from the nearby residential uses and not extend beyond the property line;

THAT the signage shall conform to C1-1 zoning district regulations;

THAT the hours of garbage collection shall be limited to daily, between 8:00 a.m. and 10:00 p.m.;

THAT installation of the fence along Morningstar Road is completed as per the BSA-approved plans;

THAT installation of the acoustical measures is installed as per the BSA-approved plans;

THAT trash enclosure is relocated as shown on the BSA-approved plans;

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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. 120-13-BZ'), shall be obtained within two years, by July 18, 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, July 18, 2022.

2017-265-BZ & 2020-2-BZ

APPLICANT – Law Office of Emily Simons PLLC, for LDR Realty Corp., owner.

SUBJECT – Application March 1, 2022– Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance and special permit permitting storage, warehouse and assembly of venetian blinds which expired on February 7, 2022. R6B zoning district.

PREMISES AFFECTED – 318-320 54th Street aka 5401 3rd Avenue, Block 822, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy pursuant to a variance, under Z.R. § 11-411, and special permit, under Z.R. § 73-53, which permitted the reinstatement of a previously issued variance and legalized the enlargement of an existing building used for storage, warehouse and assembly of venetian blinds and expired on February 7, 2022.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022.

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, and 10,017 square feet of lot area, the Premises are occupied by an existing one-story, with mezzanine, building (11,273 square feet of floor area) used for storage, warehouse, and assembly of venetian blinds.

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

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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.

On May 18, 2020, under the subject calendar number, the Board, pursuant to Z.R. § 11-411, permitted a reinstatement of the variance previously granted under BSA Cal. No. 539-56-BZ as amended by BSA Cal. No. 226-81-BZ, and, pursuant to Z.R. § 73-53, granted a special permit to legalize the enlargement of an existing one-story, with mezzanine, building used for storage, warehouse, and assembly of venetian blinds, on condition that all work and site conditions substantially conform to drawings filed with the application; the term of the variance expire on May 18, 2030; the façade of the structure be maintained properly cleaned; the roof business sign may remain so long as it is accessory to the active use in the building; the conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the 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; 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 have obtained a certificate of occupancy having expired, the applicant seeks the subject relief.

The applicant represents that delays in obtaining a certificate of occupancy have resulted due to difficulty in securing a project engineer to file plans for the mezzanine work. Once an engineer had been obtained, the Premises developed a leak that required roof repair and sheetrock replacement work which was completed in the spring of 2021. The applicant anticipates requiring two years to obtain final inspection and signoff of the construction, plumbing, and electrical work, obtain certificates of correction for Department of Buildings summonses, and obtain the final certificate of occupancy.

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, dated May 18, 2020, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for two years, to July 18, 2024, *on condition*:

THAT the term of the variance shall expire on May 18, 2030;

THAT the roof 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 within the building;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-2-BZ & 2017-265-BZ"), shall be obtained within two years, by July 18, 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, July 18, 2022.

1069-27-BZ

APPLICANT – Glen V. Cutrona, AIA, for Frank Mormando, owner.

SUBJECT – Application March 2, 2021 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 2021. C1-2/R5 zoning district. PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

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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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for a adjourned hearing.

827-55-BZIII

APPLICANT – Eric Palatnik, P.C, for Spartan Petroleum Corp., owner.

SUBJECT – Application July 15, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which is set to expire on January 31, 2021. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, Block 1361, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for decision, hearing closed.

519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for BP Products North America, Inc., owner.

SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board’s Rules of Practice and Procedures. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A., for a adjourned hearing.

467-58-BZ

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

SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board’s Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.

PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

914-86-BZII

APPLICANT – Klein Slowik, PLLC, for Union Temple of Brooklyn, owner; Eastern Atlantic Inc., lessee.

SUBJECT – Application September 30, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 19, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on December 14, 2011; Amendments to the Board’s conditions on term, Amendment to enlarge the mezzanine; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for a adjourned hearing.

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APPEALS CALENDAR

201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking which expired on August 15, 2021; Waiver of the Board’s Rules of Practice and Procedures. R3-2/C2-3 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, Block 11712, Lot 28, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for deferred decision.

214-06-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application April 2, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expires on April 10, 2022; Amendment to permit the conversion of automotive repair bays to accessory convenience store. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, Block 10509, Lot 0265, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for decision, hearing closed.

72-11-BZIII

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.

SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for adjourned hearing.

2021-78-A

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

SUBJECT – Application November 22, 2021 – Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-2D zoning district.

PREMISES AFFECTED – 131 22nd Street, Block 642, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

This is an application to establish the common law vested rights to continue construction and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 320577540-01-NB, before the effective date of an amendment to Z.R. § 42-11. This application was filed in conjunction with BSA Cal. No. 2021-80-BZY, an application to establish the statutory vesting rights at the subject Premises which was granted on July 18, 2022.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Vice-Chair Chanda performed an inspection of the Premises and the surrounding neighborhood. Community Board 7, Brooklyn, waived its recommendation of this application.

The Premises are located at the northeast intersection of 22nd Street and Third Avenue, within an M1-2D zoning district, in Brooklyn. With approximately 50 feet of frontage along 22nd Street, 200 feet of frontage along Third Avenue, and 7,146 square feet of lot area, the Premises are occupied by an unfinished four-story transient hotel.

I.

On June 15, 2015, DOB issued Permit No. 320577540-01-NB for the erection of a four-story, 54-unit transient hotel at the Premises; in January 2016, DOB issued Permit No. 340341482 for proposed installation of heavy-duty sidewalk shed; in December 2016, DOB issued Permit No. 321179826 for installation of manual and automatic smoke/heat/carbon dioxide detection and sprinkler; and in July 2019, DOB issued Permit No. 321152523 for fence installation.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement or extension of a transient hotel use

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required a special permit pursuant to Z.R. § 74-803.

Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. § 11-332(a) to complete construction and obtain a certificate of occupancy for the subject project was October 19, 2021.

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction.

III.

As discussed in *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10 (2d Dep’t 1976), where an amendment to a zoning ordinance is adopted, the owner’s rights under the prior zoning ordinance are deemed vested “and will not be disturbed where enforcement 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.” The BSA has held that “a common law vested right to continue construction generally exists where the owner has (i) undertaken substantial construction and (ii) made substantial expenditures prior to the effective date of a zoning change, and (iii) where serious loss will result if the owner is denied the right to proceed under the prior zoning.” See BSA Cal. No. 366-05-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. In particular, the applicant states that as of December 20, 2021, 100% of the foundation work, 75% of the roof and waterproofing work, 100% of stucco and cinder block work, 100% of steel structure and decking work, and 80% of plumbing for the proposed building at the Premises had been completed. In support of this contention, the applicant submitted an affidavit from the property owner and photographs demonstrating the extent of the work completed at the site.

Second, the applicant submitted evidence that “substantial expenses” have been paid or incurred as irrevocable financial commitments, totaling approximately \$7,139,283.77 since starting the project, \$4.1 million of

which was spent prior to the Text Amendment. The applicant represents that this amount was expended on completion of the foundation, concrete slab, and steel framing work.

Third, the applicant declares that serious loss will be incurred if the project is not deemed vested. Specifically, the applicant represents that the entire layout and interior of the building would be useless for a development compliant with M1-2D zoning regulations, as the proposed building was built to be used as a hotel. Requiring compliance with the current M1-2D zoning district use regulations would certainly cause the applicant to incur significant costs.

By correspondence, dated June 30, 2022, 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 18, 2022.

2021-80-BZY

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

SUBJECT – Application November 22, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2D zoning district.

PREMISES AFFECTED – 131 22nd Street, Block 642, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
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 (“DOB”), acting on New Building Application No. 320577540-01-NB, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Vice-Chair Chanda performed an inspection of the Premises and the surrounding neighborhood. Community Board 7, Brooklyn, waived its recommendation of this application.

The Premises are located at the northeast intersection of 22nd Street and Third Avenue, within an M1-2D zoning district, in Brooklyn. With approximately 50 feet of frontage a long 22nd Street, 200 feet of frontage a long Third Avenue, and 7,146 square feet of lot area, the Premises are occupied by an unfinished four-story transient hotel.

I.

On June 15, 2015, DOB issued Permit No. 320577540-01-NB for the erection of a four-story, 54-unit

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transient hotel at the Premises; in January 2016, DOB issued Permit No. 340341482 for proposed installation of heavy-duty sidewalk shed; in December 2016, DOB issued Permit No. 321179826 for installation of manual and automatic smoke/heat/carbon dioxide detection and sprinkler; and in July 2019, DOB issued Permit No. 321152523 for fence installation.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement of extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803.

Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. § 11-332(a) to complete construction and obtain a certificate of occupancy for the subject project was October 19, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction.

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 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).

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 states that as of December 20, 2021, 100% of the foundation work, 75% of the roof and waterproofing work, 100% of stucco and cinder block work, 100% of steel structure and decking work, and 80% of plumbing for the proposed building at the Premises had been completed. In support of this contention, the applicant submitted an affidavit from the property owner and photographs demonstrating the extent of the work completed at the site. 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 \$7,139,283.77 since starting the project, \$4.1 million of which was spent prior to the Text Amendment. The applicant represents that this amount was expended on completion of the foundation, concrete slab, and steel framing work. 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-

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332, 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 establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 320577540-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring December 21, 2023.

Adopted by the Board of Standards and Appeals, July 18, 2022.

2022-24-A

APPLICANT – Dominick Deangelis, RA, for Nina Kubota, President, owner.

SUBJECT – Application April 8, 2022 – Proposed development of a new 3-story NYC School Construction Authority (SCA) K-5 school building, P.S. 121, located on a site not fronting on a mapped street contrary to General City Law §36. R3A zoning district.

PREMISES AFFECTED – 4074 Victory Boulevard aka Shelley Avenue, Block 2629, Lot(s) 1, 20, 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 –

I.

The decision of the Department of Buildings, dated March 10, 2022, acting on New Building Application No. S00688101-I1 reads in pertinent part: “The proposed building does not have access to a legally mapped street, which is contrary to Article 3, Section 36 of the General City Law, therefore, obtain BSA approval.”

This is an application under General City Law (“GCL”) § 36 to permit, in an R3A zoning district and a Lower Density Growth Management Area, the development of a three-story New York City School Construction Authority (“SCA”) school building located on a site not fronting on a mapped street.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Community Board 3, Staten Island, recommends approval of this application on condition, stating:

We understand the SCA has not sought the input of the local civic association prior to designing this project, however, they did commit to speak with the Travis Civic Association to see if they

can address some of the issues they raise.

The Board received one letter of conditional support from a councilmember requesting that the Board’s approval be limited to the technical matter to allow flexibility to continue to discuss how the site should be laid out.

The Premises are located on an irregularly shaped lot bounded by Victory Boulevard to the west, Shelley Avenue to the north, and Wild Avenue to the south, within an R3A zoning district and a Lower Density Growth Management Area, in Staten Island. With approximately 244 feet of frontage along Victory Boulevard, 318 feet of frontage along Shelley Avenue, 522 feet of frontage along Wild Avenue, 540 feet of depth, and 149,230 square feet of lot area, the Premises are currently occupied by a former house of worship with an accessory garage.

II.

GCL § 36 (2) states, in part:

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.

III.

The applicant proposes to demolish the existing structure and construct a new three-story building with approximately 80,000 square feet for a 572 seat new public

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school that would include classrooms serving Pre-K through Grade 5 students. The applicant represents that the proposed buildings would include science, music and art classrooms, a library, reading/speech resources rooms, special education room, an exercise room, gym/multipurpose room, cafeteria/kitchen, general administration offices, and custodial support facilities. The applicant further states that an outdoor playground of approximately 12,000 square feet would be located on the southern portion of the project site and would front along Wild Avenue, and an early childhood center play area of approximately 2,900 square feet would be provided in the front of the proposed building adjacent to the main school entrance.

By letter dated April 29, 2022, the Office of the Staten Island Borough President states that Victory Boulevard along the subject site had a record width of 50 feet; does not appear on the final New York City map; has no vesting status; and is the subject of an Opinion of Dedication, as-in-use width, dated November 17, 1925. Furthermore, Wild Avenue along the subject site has a record width of 60 feet; does not appear on the final New York City map; has no vesting status; is the subject of an Opinion of Dedication, as-in-use width, dated November 17, 1925; and has a prescriptive street status for a width of 60 feet granted on December 17, 1971. Finally, Shelly Avenue along the subject site has a record width of 50 feet; does not appear on the final New York City map; has no vesting status; has an Opinion of Dedication for a 50 foot width, as-in-use, dated November 17, 1925; and has a prescriptive street status for a width of 50 feet granted on March 13, 1974.

Pursuant to the GCL § 36 requirements, the applicant represents that the project site's irregular shape limits site access options as all streets surrounding the project site are unmapped, if GCL § 36 (2) is enforced, the permit application for the proposed addition would not be approved by DOB, and, therefore, the project could not move forward. The applicant represents that without DOB approval, it would be prevented from providing an additionally 572 permanent school seats to public school capacity in CSD31, which has elementary school facilities collectively operated at approximately 111 percent of their targeted capacity.

Moreover, the applicant represents that in order to facilitate this project, the SCA received Mayoral Overrides on June 3, 2022 related to the zoning envelope requirements noted below. Per the SCA's enabling legislation, the SCA is exempt from the Uniform Land Use Review Procedure ("ULURP") and is able to seek necessary zoning overrides from the Deputy Mayor for Economic and Workforce Development. The applicant states that it has received the following Mayoral Overrides:

- a. The proposed new building would not comply with certain bulk zoning requirements regarding the maximum height of front wall and required front setbacks (Z.R. § 24-521), due to its proposed location within the zoning lot, therefore a zoning variance is requested for this Z.R. section. The applicant states that the irregularly shaped parcel, the presence of

privately owned neighboring residence, and other site limitations presented design challenges resulting in the requested override. The applicant represents that this design facilitates meeting DOE programmatic requirements, the design needed to maximize the footprint and stack program spaces vertically, while conserving open space for the rest and relaxation of the students. Additionally, the project includes an internal driveway to provide for school bus pick up and drop off of the students, resulting in a building mass that impinges on maximum street wall height and the required sky exposure plane.

At hearing, the Board raised concerns about the location of the school on the subject site, specifically the ability to ensure safe pedestrian and vehicular access to the school. In response, the applicant submitted a commitment letter, which stated that it worked in close collaboration with the Department of Transportation ("DOT"), School Safety to provide separate school bus drop off within the site. The applicant commits to ongoing collaboration with DOT and other stakeholders to ensure that school safety and traffic issues are properly addressed throughout the design and construction process.

IV.

By letter dated June 3, 2022, the Fire Department states that the Fire Department, Bureau of Operations and Fire Prevention has reviewed the application materials. An application has been filed with its office (2022-TMENGR-003538-PLAN) and a preliminary review shows compliance with applicable regulations of the Fire Department of the City of New York with respect to fire apparatus access road and location of fire hydrants. Based upon the foregoing, the Fire Department hereby issues a "Conditional Letter of No Objection" to the application. If conditions are found not to be in compliance with the NYC Fire Code, the Fire Department will notify the SCA and the Board of Standards and Appeals of such non-compliance.

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4. On December 1, 2021, SCA issued a Negative Declaration, SEQRA No. 20-009, prepared in accordance with Article 8 of the Environmental Conservation Law 6 NYCRR Part 617. The SCA conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Form ("EAF") and Supplemental Studies, SEQRA No. 20-009, dated November 22, 2021. The EAF documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood

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Character; or Construction.

Subsequent to issuing the Negative Declaration, the SCA prepared a Technical Memorandum dated June 6, 2022 explaining that the build year for the environmental analyses was changed from 2026 to 2025. The memo holds that the conclusions of the previous environmental review are still valid, and the revised build year will not result in any significant adverse impacts.

By letter dated June 29, 2022, the New York City Department of Environmental (“DEP”) states that the proposed sanitary and storm will be discharged as per the certified Site Connection Proposal (“SCP”) #809/22. The proposed water connection will be on the existing City water mains, fronting the property. It is anticipated that the proposed water connection, and the proposed sanitary and storm discharge will be maintained by the owner and will not be maintained by the City of New York. Based on the above, the NYC DEP has no objections to the proposed GCL § 36 application.

By memorandum dated June 3, 2022, the Office of the Deputy Mayor for Economic and Workforce Development states that it approves the request for the non-compliance with Z.R. § 24-521.

By letter dated June 3, 2022, the New York City Department of Transportation (“DOT”) School Safety states that since 2020, DOT and SCA have had several meetings to go over site design and discuss concerns related to traffic patterns and pedestrian safety for this project. The final site plan is the result of the agreements reached between the two agencies. DOT is typically not supportive of layover areas next to schools but has made an exception in the subject application given the unique challenges of the site layout. The proposed layover design is acceptable to DOT on condition that the driveway will be used exclusively by school buses at all times, which SCA has agreed to. After construction of the project is complete and the ownership of the building is transferred to the NYC Department of Education (“DOE”), the DOE would be responsible for ensuring the proper usage of the driveway. As such, the SCA will advise the DOE that the driveway is for school buses only.

DOT will install the “School Buses Only” signage at the entrance to the layover area along Victory Boulevard. DOT will also install additional “No Standing Anytime” signage on Victory Boulevard and Shelley Avenue if DOT determines it is necessary to accommodate turning school buses and FDNY vehicles. Additionally, DOT will add school loading zones (“No Standing School Days 7 am- 4 pm”) along the school frontages on Shelley Avenue and on Wild Avenue, where feasible. Final determination on No Standing Anytime and No Standing School Days signage installation will be made by DOT upon completion of construction and 4-6 months prior to school opening. DOT does not require any additional information from SCA to make this determination. DOT is supportive of the project moving forward.

Accordingly, 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 *adopt* the findings of Negative Declaration dated December 1, 2021 prepared by SCA in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and does hereby *modify* the decision of the Department of Buildings, dated September 23, 2021, acting on New Building Application No. S00688101-11, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the development 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 “Board Approved July 18, 2022”- One (1) sheet; and *on further condition*:

THAT the driveway must be used exclusively by school buses at all times;

THAT after construction of the project is complete, and the ownership of the building is transferred to the NYC Department of Education (“DOE”), the DOE will be responsible for ensuring the proper usage of the driveway;

THAT DOT will install the “School Buses Only” signage at the entrance to the layover area along Victory Boulevard;

THAT DOT will install additional “No Standing Anytime” signage on Victory Boulevard and Shelley Avenue if DOT determines it is necessary to accommodate turning school buses and FDNY vehicles;

THAT DOT will add school loading zones (“No Standing School Days 7 am- 4 pm”) along the school frontages on Shelley Avenue and on Wild Avenue, where feasible;

THAT final determination on No Standing Anytime and No Standing School Days signage installation will be made by DOT upon completion of construction and 4-6 months prior to school opening;

THAT SCA will continue to consult with DOT regarding recommended measures to mitigate traffic impacts;

THAT in consultation with DOT, the SCA will perform additional traffic studies and will consider reasonable mitigations should same be warranted;

THAT the applicant will continue review with the FDNY with respect to compliance with fire apparatus road access and location of fire hydrants;

THAT a Phase IB investigation and any required subsequent archaeological investigations will be conducted as described in the EAF to confirm the presence or absence of archaeological resources on the project 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. 2022-24-A”), shall be obtained within four years, by July 18, 2026;

THAT the Department of Buildings must ensure

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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, July 18, 2022.

2019-96-A thru 2019-155-A

APPLICANT – Rampulla Associates Architects, LLP, for ELOC FTK, LLC, owner.

SUBJECT – Application May 23, 2019 – To permit the construction of 48 two family and 5 single family homes not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District.

PREMISES AFFECTED – Bluebelt Loop, Cole Street, Block(s) 7558, 7564, 7566 & 7562, Lot (s) 53, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 111, 110, 109, 108, 107, 41, 106, 40, 105, 39, 104, 38, 103, 37, 102, 36, 101, 35, 100, 98, 99, 34, 97, 33, 96, 32, 95, 31, 94, 130, 193, 92, 91, 190, 25, 26, 23, 27, 22, 28, 21, 29, 20, 19, 18, 17, 16, 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for postponed hearing.

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Block 15510, Lot 0011. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for deferred decision.

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.

SUBJECT – Application September 4, 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). R3X Special Richmond District.

PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

2021-2-A thru 2021-7-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 99-21 Hollis Avenue LLC, lessee.

SUBJECT – Application January 13, 2021 – Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 99-21 Hollis Avenue aka 191-01/191-09/191-13/192-01/192-05/192-13 Hollis Avenue, Block 10839, Lot (s) 1, 50, 49, 48, 47, 46, Borough of Queens.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

2021-57-A

APPLICANT – Eric Palatnik, P.C., for Raphael Holguin, owner.

SUBJECT – Application August 24, 2021 – Proposed construction of a two-story commercial (UG 6) building located partially in the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1900 Hylan Boulevard, Block 3666, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for continued hearing.

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2022-2-A

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for RXR-LBA Red Hook Owner LLC, owner.

SUBJECT – Application January 11, 2022 – Application to permit the construction within the unbuilt portion of a mapped street contrary to General City Law §35 and ZR §72-01(g). M3-1 zoning district.

PREMISES AFFECTED – 728 Court Street, Block 623, Lot(s) 1, 20, 62 and 93, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for postponed hearing.

ZONING CALENDAR

2020-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1215 East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street, Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 23, 2020, acting on Application Type Alteration 1 No. 321592228, reads in pertinent part:

1. ZR 23-141: Proposed plans are contrary to ZR Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted.
2. ZR 23-141: Proposed plans are contrary to ZR Section 23-141 in that the proposed open space ratio is less than the minimum required.
3. ZR 23-461: Proposed plans are contrary to ZR Section 23-461 in that one proposed side yard is less than the minimum required.
4. ZR 23-47: Proposed plans are contrary ZR Section 23-47 in that the proposed rear yard is less than the minimum required.

This is an application for a variance, pursuant Z.R. § 72-21, to permit, in an R2 zoning district, the enlargement and combination of two single-family residences into one single-family residence, contrary to regulations for floor area ratio, open space ratio (Z.R. § 23-141), side yard (Z.R. § 23-4611), and rear yard (Z.R. §23-47).

A public hearing was held on this application on April 13, 2021, after due notice by publication in *The City Record*,

with a continued hearing September 23, 2021, and then to decision on July 18, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and the surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board received two form letters of support for this application.

The Premises are located at the east side of East 22nd Street, between Avenue K and Avenue L, within an R2 zoning district, in Brooklyn. With approximately 80 feet of frontage along East 22nd Street, 100 feet of depth, and 8,000 square feet of lot area, the Premises are occupied by two, two-story, single-family residences.

The existing single-family residence to the north located at 1215 East 22nd Street, is two-stories plus an attic with 2,438 square feet (.70 FAR). The applicant describes the Premises as having a front yard with a depth of 19'-0"; a rear yard measuring 30'-6"; a side yard on the northern side of the lot measuring 2'-8"; a side yard on the southern side of the lot is measuring 0'-8"; a perimeter wall height of 22'-9"; a total height of 36'-7"; and one parking space located in a garage in the side yard. The existing single-family residence to the south is located at 1217 East 22nd Street and is a two-stories with 2,900 square feet (.64 FAR). The applicant represents that the Premises has an existing front yard measuring 16'-10"; a rear yard measuring 14'-1"; a side yard on the northern side of the lot measuring 3'-11"; a side yard on the southern side of the lot measuring 15'-0"; a perimeter wall height 22'-7"; a total height of 34'-10"; and one parking space located in the side yard.

The applicant proposes to combine the two existing residences into one residence by maintaining portions of each building and creating a connection. The applicant states that the proposed residence would contain 5,460 square feet (.68 FAR), comprised of an additional 221 square feet on the first floor, an additional 1410 square feet on the second floor, and 75 square feet on the attic level. Furthermore, the applicant describes that the existing 584 square foot attic would be removed, and the additional square footage would be accomplished with the connection and extensions in the front of the existing residences. Specifically, the applicant states that the front yard on the northern part of the property would be reduced to 17'-1", and the front yard on the southern side of the property would be increased to 17'-1". Moreover, the applicant further describes that the rear yard on the northern part of the property would be reduced by six inches to 30'-0", due to the addition of a new exterior finish on the existing wall. Additionally, the applicant declares that the rear yard on the southern part of the property is proposed to be increased to 20'-10" on the first floor and 29'-6" on the second floor, and the center connection is proposed to have a rear yard that is greater than forty feet. The applicant also maintains that the preexisting northern side wall that is located 4'-11" from the lot line and adds a four-inch brick veneer as permitted by Z.R. § 23-44(a)(8). The applicant further proposed that the perimeter wall height would be 22'-9"; the total height is proposed to decrease to 33'-8"; and the residence would

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have parking pads for two cars in the southern side yard.

At hearings, the Board requested that the applicant revise the proposed plans to illustrate the exterior finish materials to certify that no exterior insulation finishing system (“EIFS”) would be used on the proposed residence; indicate the height of the first floor above the base plane; show perimeter wall heights and total heights in NAVD88; correct the dimensions on the existing plans so that they match the proposed plans that indicate walls to be retained; verify all of the dimensions match across all drawings and if additional finish material is being added to the exterior of the existing walls to increase their thickness, and indicate with correct calculations and additions; and to correct the floor to floor heights in the sections as they are different between the proposed and existing drawings yet indicate joists to remain in place.

Furthermore, Technical Policy and Procedure Notice 13/88 states:

In order to be considered attic space within the intent of the exemption from floor area, pursuant to Section 12-10 of the Zoning Resolution, the following guidelines are to be used:

1. The exempt space must be adjacent to the perimeter of the building directly below the roof, and the measured head room of less than eight feet, shall be between the floor level and ceiling fastened directly to the roof rafters. All other floor space below dropped ceilings, collar or tie beams or any other type of ceiling construction shall be countable floor area, regardless of the head room.
2. The roof rafters slope upward toward the ridge with a minimum rise of 3 1/2 inches per foot.
3. The exterior side walls enclosing the exempt attic area are not to exceed 7'-0" in height.
4. The space contained between the finished ceiling of the attic area and ridge of the roof construction is not to be used or usable for any purpose, except normal household storage when properly designed.
5. Except for split-level buildings with a maximum difference of 12' between average roof levels, only the portion of the building located on the highest story shall be considered as having any attic space.

The Board notes that the applicant failed to provide a TPPN 13/88 analysis, except to say the level is accessed by a hatch. The Board requested that the applicant provide the analysis and access plan, noting that the attic, whether or not accessible by a hatch and whether or not a floor is laid, must comply with TPPN 13/88, or the Board will ask for a DOB determination on floor area.

After the initial two hearings, the Board closed discussion on the application while leaving the record open to permit the applicant to submit minor corrections to materials before the scheduled vote. Instead, the applicant submitted revised plans and calculations that were drastically different than what had been discussed before the

Board and contained several errors. Specifically, the applicant changed the scope of the requested waiver submitting a plan for an FAR that had increased twice by .01; floor area that had increased 114 square feet; OSR which increased by 2%; a wall height that had increased by one foot; and a front yard depth that had increased by 1'-8". Furthermore, the Board notes that the noncomplying side yard decreased by four inches, which the Board cannot allow unless it complies with permitted obstructions as stated in Z.R. § 23-44(a)(8).

In regards to the plans submitted before this hearing, the Board expressed that the that the note on the plans stating that BSA makes no representation as to whether or not the added thickness meets the required “R” conditions should add that assessment is to be reviewed by DOB; did not depict the exterior materials as requested; contained only calculations for the total wall linear footage that were to remain; the rear yard depth remains the same, when there should be a reduction in floor area; the front to back string dimension provided on one side is one inch longer than the site; attic diagram should show floor to rafter heights throughout the residence to allow DOB to review the full scope of the possible floor area; no dimensioned height of dropped ceiling; and depicted a 20 square foot increase on the floor area on the newly created first and second floors.

Moreover, the Board questioned how the first floor elevation at 4'-2" and 3'-9" above base plane at the same time, as that would make the floor to floor heights five inches different between the floors and stated that the applicant changed floor to floor heights without informing the Board. Finally, the applicant submitted a cover letter which misrepresents that modification to the existing wall to remain as the applicant states one wall and two partial walls are being removed from the second floor, and a partial wall to be added back, which reduced retained total reduced from 72% to 57%, which is not stated in cover letter.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated June 24, 2022, 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 18, 2022.

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CORRECTION: This resolution, adopted on July 18, 2022, under Calendar No. 2020-74-BZ, is hereby corrected to read as follows:

2020-74-BZ

APPLICANT – Nasir J. Khanzada, for Arline R. Mallinson, owner; Jagjit Singh, lessee.

SUBJECT – Application September 16, 2020 – 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.

PREMISES AFFECTED – 1500 Williamsbridge Road, Block 4082, Lot 5, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 17, 2020, acting on DOB Job No. 240276009, reads:

In C2-2 zoning district, BSA approval is required for proposed retail convenience store accessory to an automotive service station as per ZR 73-211 and existing automotive service station established under BSA resolution after December 15, 1961 as indicated on the Certificate of Occupancy no. 200813334. In addition, provide BSA approval under which automotive service station has previously approved.

This is an application under Z.R. §§ 73-211 and 73-03 to permit, in a C2-2 (R4) zoning district, the operation of an automotive service station (Use Group (“UG”) 16B) with an accessory convenience store, contrary to Z.R. § 32-10.

A public hearing was held on this application on May 24, 2022, after due notice by publication in *The City Record*, and then to decision on July 18, 2022. Commissioner Sheta performed an inspection of the Premises and surrounding neighborhood. Community Board 11, Bronx, recommends approval of this application. The Board received one letter of objection citing concerns over increased traffic, accumulation of debris and garbage, a similar use already in existence across the street from the subject site, and clogged drains.

The Premises are located on the northeast corner of Williamsbridge Road and Eastchester Road, within a C2-2 (R4) zoning district, in the Bronx. With approximately 107 feet of frontage along Williamsbridge Road, 88 feet of frontage along Eastchester Road, and 20,000 square feet of lot area the Premises are occupied by an existing automotive service station.

The Board has exercised jurisdiction over the Premises since April 21, 1959 when, under BSA Cal. No. 707-56-BZ, the Board granted a variance for a term of 15 years, to

expire on April 21, 1964, to permit the Premises to be occupied as a gasoline service station with uses lawfully accessory thereto, substantially as proposed and indicated on plans filed with the application, on condition that all buildings and uses on the Premises be removed and the site graded substantially to the grade of Williamsbridge Road, constructed and arranged and indicated on BSA-approved plans; the accessory building be of the design, arrangement and location indicated, faced with brick on the west and south sides; the north and east sides be of block or common brick painted; there be no openings in such walls to adjoining Premises; there be no cellar in such building and in all other respects the building comply with all laws, rules, and regulations applicable thereto; pumps be of an approved low type, erected not nearer than 15 feet to the street building lines of Williamsbridge and Eastchester Roads; there be no more than 12 550-gallon approved gasoline tanks on the Premises; on the lot line to the north, where walls of adjoining buildings do not occur there be erected a woven wire chain link fence on a masonry base to a total height of not less than 5 feet 6 inches; such a fence temporarily extend to the existing building line of the Premises; such space within the plot as is proposed to be acquired by the City for street widening may be used to traverse for entrance and exit, provided such space is paved similarly to the paving of the station, which be concrete or asphalt; curb cuts be restricted to two on Williamsbridge Road and two on Eastchester Road, each 30 feet in width and with no portion of any curb cut nearer than 5 feet to a lot line as prolonged; at the intersection there be a block of concrete 12 inches in height, extending for five feet along each street line from the intersection; such portable fire-fighting appliances be maintained as the Fire Commissioner direct; under Section 7i there may be minor repairs and inspections are maintained solely within the accessory building; under Section 7e, there may be, for a similar term, parking and storage of motor vehicles, provided such uses are located so as not to interfere with the servicing of the station; signs be restricted to permanent signs attached to the façade of a accessory building and to the illuminated globes of the pumps, excluding all temporary and roof signs and advertising devices, but permitting the erection within the intersection of one post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend not more than 4 feet beyond the building line; and all permits required be obtained and all work completed within requires of Section 22A of the Zoning Resolution.

On June 9, 1959, under BSA Cal. No 707-56-BZ, the Board amended the resolution insofar as it refers to the size of the accessory building which was originally shown on the previously BSA-approved plans to be 60 feet in length and is now shown on plans filed with the request for a amendment to be 57 feet 4 inches in length by 27 feet 4 inches in depth, on condition that in all other respects the resolution previously adopted by the Board be complied with.

On January 15, 1974, under BSA Cal. No. 707-56-BZ, the Board further amended the resolution to permit an

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extension of the term of the variance for ten years, to expire on April 21, 1984, 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 18, 1984, under BSA Cal. No. 707-56-BZ, the Board further amended the resolution to permit an extension of the term of the variance for ten years, to expire on April 21, 1984 and to legalize the temporary enclosure installed in front of the overhead doors and the deletion of one gasoline pump from each existing gasoline pump island, on condition that the project substantially conform to the BSA-approved plans; 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 September 18, 1985.

On June 24, 1986, under BSA Cal. No. 707-56-BZ, the Board further amended the resolution, in conjunction with a change to self-service gasoline station in accordance with the conditions of the resolution granted under BSA Cal. No. 215-86-A, to permit the erection of a new 32'-0" x 84'-0" canopy over five new gasoline pump islands with new self-serve pumps; to erect a new 7'-8" x 15'-8" kiosk on the center gasoline pump island and to demolish the existing building, on condition that the Premises conform to revised drawings of proposed conditions on the BSA-approved plans; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one year, by June 24, 1987; and other than as amended, the resolution be complied within all respects.

On November 15, 1994, under BSA Cal. No. 707-56-BZ, the Board further amended the resolution to grant an extension of the term of the variance for ten years, to expire on April 21, 2004, on condition that the Premises be maintained graffiti-free; the Premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by November 15, 1995.

On September 10, 1996, under BSA Cal. No. 707-56-BZ, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit an extension of time to obtain a certificate of occupancy, on condition that a new certificate of occupancy be obtained within 18 months, by May 15, 1997.

On June 8, 2004, under BSA Cal. No. 707-56-BZ, the Board further amended the resolution to permit the extension of the term of the variance for an additional 10 years from April 21, 2004, to expire on April 21, 2014, on condition that all work substantially conform to drawings as filed with the application; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; a six-foot opaque fence be provided on the portions of the lot abutting other uses as shown on the submitted plans; the above conditions and all

conditions from prior resolutions appear on the certificate of occupancy; the approval is 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) and/or configuration(s) not related to the relief granted.

The applicant proposes to demolish the existing kiosk and associated dispenser along the two northernmost dispensers while maintaining the two southernmost dispensers, constructing a new one-story plus cellar building as well as two new dispensers in the kiosk area. The applicant further proposes to reduce the canopy back at the proposed building line to a length of approximately 73 feet and would have five parking spaces in total, one of which would be ADA accessible.

DOB Technical Policy and Procedure Notice ("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 accessory convenience store is 1,344 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (2,289 square feet).

Over the course of hearings, the Board raised concerns regarding the proposed landscaping, trash enclosure, ADA accessibility, and drainage at the subject site. In response, the applicant revised the plans to provide more details in the planting bed dimensions and improved ADA access to the proposed building by changing the degree of slope on the site which resulted in increased number of parking spaces. Additionally, the applicant proposed a trash enclosure with steel door and a new trench drain, area drain, and drywells at the gas station to prevent clogged drains.

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. 21BSA016X, dated July 18, 2022. 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.

No other significant effects upon the environment that would require an Environmental Impact Statement are

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

By letter dated March 25, 2022, the New York City Landmarks Preservation Commission states that there are no architectural significance or archaeological significance at the subject site.

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 *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. §§ 73-211 and 73-03 to *permit* the operation of an automotive service station (UG 16B) with an accessory convenience store, contrary to Z.R. § 32-10, *on condition* that all work, site conditions, and operations shall conform to drawings filed with this application marked “Board Approved July 18, 2022 — Seven (7) sheets” and *on further 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 there be no parking of vehicles on the sidewalk or in such manner as to obstruct pedestrian or vehicular traffic;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-74-BZ”), shall be obtained within four years by July 18, 2026;

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 18, 2022.

CORRECTION: This resolution adopted on July 18, 2022, under Calendar No. 2021-43-BZ, is hereby corrected to read as follows:

2021-43-BZ

CEQR # 21-BSA-057Q

APPLICANT – Greenberg Traurig, LLP, for Harmony Rockaway LLC, owner.

SUBJECT – Application June 29, 2021 – Variance (§72-21) to permit the repurposing of an existing three-story plus cellar building to be occupied with commercial offices (UG 6B) and as of right community facility uses contrary to ZR §32-00. R4-1 zoning district.

PREMISES AFFECTED – 90-91 Beach Channel Dr., Block 16124, Lot (s) 33, 76, 78, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 14, 2021, acting on New Building Application No. 421223161, reads in pertinent part: “The proposed commercial use is not a permitted use in the R4-1 zoning district per the provision of Zoning Resolution Section 22-10.”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R4-1 zoning district, the repurposing an existing three-story plus cellar building to be occupied with commercial offices (Use Group (“UG”) 6B) and as of right community facility uses, contrary to Z.R. § 22-10.

A public hearing was held on this application on April 25, 2022, after due notice by publication in *The City Record*, with a continued hearing on June 7, 2022, and then to decision on July 18, 2022. Community Board 14, Queens, recommends approval of this application, on condition that:

1. A deed restriction be put in place to prohibit any residential or overnight stay uses.
2. The applicant, owners, and property permanently maintain restriction of the specialty medical uses as previously outlined and approved by Community Board #14.
3. The Community Board’s approval is predicated on the Economic Development Corporation including these conditions in the deed and land, building sale and or lease.

The Board received one letter of support and two letters of objection to this application, citing concerns over increased foot traffic, parking, safety issues related to having a commercial use in a residential area.

I.

The Premises occupy the entire southern blockfront of Beach Channel Drive, between Beach 90th Street and Beach 91st Street, within an R4-1 zoning district, in the Queens.

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With approximately 201 feet of frontage along Beach Channel Drive, 100 feet of depth, and 20,095 square feet of tax lot area, the Premises are occupied by a three-story building formerly used as a courthouse.

The Board has exercised jurisdiction over the Premises since October 21, 1986, when, under BSA Cal. No. 774-85-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R1-4 zoning district, the reestablishment of UG 6 use in an existing three-story courthouse which does not conform to the use regulations on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the owner comply with the conditions set forth in the conditional negative declaration; all signs conform to C1 district regulations; 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 complete in accordance with Z.R. § 72-23.

II.

The applicant states that during a 2018 renovation, it added a second means of egress and an elevator and created deeper floorplates to facilitate the permitted use from a 2014 Mayoral Override, which allowed ambulatory medical facilities in excess of 1,500 square feet and granted side yard and side set back waivers to facilitate the enlargement of the building, as well as a deed restriction requiring the original building to be rehabilitated and reconstructed into a medical center.

The applicant represents that the building has 27,109 square feet of floor area; has retained original existing non-complying bulk conditions at the front yard and setback encroachment; and pursuant to the Mayoral Override, the expansion encroached on the side yard required pursuant to Z.R. § 24-551 for community facility uses in residential districts. The applicant represents that it does not seek to expand the existing envelope of the building.

The applicant proposes to occupy the existing building envelope with permitted occupancy on any of its three floors with UG 6B commercial office uses in addition to conforming community facility uses permitted as of right in the R4-1 zoning district. The applicant seeks a variance in order to maintain flexibility for the property owner to occupy portions of the building with conforming community facility uses in addition to the proposed commercial office uses. The applicant states that the proposed building would have a 13,161 square foot dry flood-proofed cellar level and a 13,674 square foot ground floor with approximately the same floorplate as the cellar, each including the original central core and flanking wings of the building, plus the additions to the rear of the building, which the applicant states, pursuant to the mayoral override, would be constructed to the side lot line of the former courthouse. The applicant also represents that the proposed building's second floor would be 7,152 square feet, consisting of the original central core, circulation stairs at the end of each original

wing and small rooms adjoining the circulation stairs at the end of each original wing and small rooms adjoining the circulation stairs, the upper volumes of the double-height portions of the original courtroom on the first floor, and the addition to the rear of the building, which sets back approximately 19 feet from most of the side lot line at this level. The applicant further declares that the building's third floor is 6,282 square feet, having a similar floor plate to the second floor, except there are no rooms adjacent to the circulation stairs at this level. Furthermore, the applicant states that the building would provide 18 off-street accessory parking spaces on lots 76 and 78.

In the subject R4-1 zoning district, commercial use is not permitted, as per Z.R. § 22-14.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the building's unusual structural elements and configuration—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 states that although it would be physically feasible for the building to provide community facility office space, such uses would not provide a reasonable return, due to the significant costs that the owner undertook to upgrade the original building's conditions to make it suitable for such occupancy. Additionally, the applicant represents that while the owner made these improvements to accommodate the contemplated ambulatory medical facility use, the changes would have been necessary for any community facility or commercial office occupancy.

In support of this contention, the applicant provided as-of-right drawings with a building envelope identical to that of the proposed building but occupied by conforming community facility office uses throughout. The drawings demonstrate that conforming building, like the proposed building, would provide 18 off-street accessory parking spaces on Lots 76 and 78, would also require a change to the deed restriction to occupy the building as shown in the as-of-right drawings. 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.

B.

Next, as per Z.R. § 72-21(b), the applicant submits that due to the physical condition of the subject zoning lot, there is no possibility that the development of residential or community facility use on the lot in strict conformity with the provisions of the Zoning Resolution would bring the owner a reasonable return. Moreover, the applicant states that a grant of a variance is necessary to enable the applicant

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to realize a reasonable return from the renovations performed and the continued use of the subject Premises. In support of this contention, the applicant submitted a financial report which states that the hard costs for the renovation and expansion of the original building to bring the building to its current condition, including environmental clean-up and asbestos abatement, the necessary upgrades of the original structure (such as new electric, plumbing, heating, and fire protection infrastructure; new windows and roofing; and re-setting of loose limestone on the exterior), and the three-story plus cellar expansion on the south side of the Building, totaled \$6,230,694, and that soft costs associated with the project, totaled \$1,617,765.

Additionally, the applicant submitted an economic analysis report which concludes that the net operating income for the as-of-right building, based on community facility rents of \$30 per square foot based on comparable community facility space in the area, would be \$362,000, for a capitalized value of \$5,569,000 at the 6.5% capitalization rate. The economic analysis report also estimates that, as a result of the provision of Historic Tax Credits (“HTCs”), the conforming building would also have an added value of \$2,791,000 for the present value of the HTCs, increasing the total project value of the Conforming Building to \$8,360,000. Since the total development costs of the Conforming Building, including the hard and soft construction costs and estimated property value, are estimated to be \$14,320,000, the capitalized value of the conforming building would be \$5,960,000 less than the development costs. Accordingly, the Board finds that because of the unique physical condition at the subject Premises, there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the Zoning Resolution would bring a reasonable return.

C.

The applicant further 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. The applicant maintains that although the surrounding area, especially along the north-south streets in the R4-1 zoning district, is occupied predominately by residential uses, “the R4-1 zoning district is a particularly poor fit for the neighborhood’s east-west roads,” in particular for Beach Channel Drive, which is “a thoroughly mixed-use corridor”. The applicant gleans this information from its Neighborhood Character Study which finds that “Beach Channel Drive is heavily trafficked at higher speeds and is thus not well-suited to residential use.” The Neighborhood Character Study states that proposed office use would front on “a major arterial with numerous commercial uses,” Beach Channel Drive, especially near the Cross Bay Bridge, which intersects with Beach Channel Drive one block west of the zoning lot, has long had a mixed-use, heavily trafficked character. The Study concludes that the proposed Use Group 6B office use would not impair the use of

adjacent properties. The Study notes that “the Building has thick masonry walls, and very few windows, on its south (rear) façade towards the adjacent residential homes” and that it “is further buffered from the adjacent homes by considerable distances; along Beach 90th Street by approximately 125 feet (the combined width of yards, and lots 76 and 78, which will be used for parking), and along Beach 91st Street by approximately 50 feet (which includes the generous side yard of the home on Lot 29).” To the north of the Zoning Lot, a series of semi-detached houses and the McDonald’s restaurant are separated from the building by the full width of Beach Channel Drive. The Neighborhood Character Study concludes that using the Building for ordinary professional offices would not be fundamentally different than using the building for medical offices, such that the neighborhood’s character would be altered, as “[e]ither use would have both those who work there, and their clientele, coming and going from the site;” “[n]either use is prone to noxious externalities;” “both are largely confined to business hours;” the “office ‘character’ of the uses is ultimately the same, and both are consistent with the [Use Group 6D] courthouse use that predates them.”

Additionally, the applicant submitted a Traffic Study Analysis which finds that the proposed commercial office use would be expected to have a lower traffic impact than medical offices, which generate more pedestrian and vehicle trips traffic than traditional offices due to patients arriving and leaving the facility throughout the day. Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located; would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant states that the practical difficulties and unnecessary hardship affecting the Premises are due to age, construction, and layout of the original building and not caused by the current owner or a 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.

E.

The applicant notes that the variance request is the minimum necessary to develop the Premises. The applicant reiterates that the owner has enlarged and renovated the original building at considerable expense, and efforts to secure a tenant for ambulatory medical facilities or a conforming community facility use have been unsuccessful. The applicant states that given the significant costs that the owner has incurred to upgrade the building for ambulatory medical facilities, which upgrades would also have been necessary for any community facility or commercial office use, the requested use variance is still the minimum necessary to afford relief. Accordingly, the Board finds that

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the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

At hearings, the Board raised concerns regarding the measures to shield the residential neighbors from the proposed commercial use including the location and finishing of the trash enclosure at the site, landscaping, and lighting and noise attenuation at the site. In response, the applicant submitted a site plan to improve its relationship to the adjacent site with dense landscaping, growing to at least eight feet; relocation of the trash enclosure, allowing for an additional parking space; a note stating that within the parking area at the Premises lighting would not shed or project noise onto the adjacent residential properties; and detailing of the updated screening and noise attenuation at the site.

V.

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. 21BSA057Q, dated July 18, 2022. 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 March 4, 2022, the New York City Department of Landmarks Preservation Commission (“LPC”) states that the subject building does not have any architectural or archaeological significance, and the proposed project will not create impacts to historic properties. In the event that above-ground construction or alterations would occur on any properties that are LPC designated or eligible, and/or State and National Register of Historic Place (“S/NR”) listed or eligible, the Commission and/or the New York State Historic Preservation Office (“SHPO”) should be notified so that the applicable permits or approvals may be issued.

By letter dated February 23, 2022, the New York City Department of Environmental Protection, Bureau of Sustainability (“DEP”) has reviewed the December 2021 Environmental Assessment Statement (“EAS”) for hazardous materials for the proposed project. The proposed project would not involve in-ground excavation or subsurface disturbance. In 2014, the applicant was selected by the New York City Economic Development Corporation (“EDC”) to rehabilitate the building for occupancy by medical office tenants. As part of EDC’s selection of the applicant, a mayoral zoning override to the Zoning Resolution (“ZR”) was granted to allow medical uses in excess of 1,500 square feet and to waive side yard (Z.R. § 24-35) and side setback (Z.R. § 24-551) requirements

applicable to community facility uses in the R4-1 zoning district to facilitate the occupancy of the building with ambulatory diagnostic/treatment health care facilities; the mayoral zoning override also allowed an enlargement to the rear (south façade) of the then approximately 21,000 gross square feet (“gsf”) building to its current area of 40,269 gsf. In connection with the mayoral zoning override, an Environmental Assessment Statement was prepared in 2014 (CEQR No. 14DME014Q) and a March 2019 Remedial Action Plan (“RAP”) and January 2019 Construction Health and Safety Plan (“CHASP”) were reviewed by DEP.

The March 2019 RAP proposes transportation and off-site disposal of soil in accordance with applicable laws and regulations; air monitoring; dust control; if dewatering is necessary, a Wastewater Quality Control application will be completed and submitted to the New York City Department of Environmental Protection for obtaining a letter of approval to discharge groundwater to the New York City sewer system; on-site soil will be stockpiled and covered with properly anchored tarps; installation of a vapor barrier system consisting of GCP Applied Technologies (“GCP”) PREPRUFE 300R Plus 46-mil membrane for use below new slabs, and GCP PREPRUFE 160R Plus 32-mil membrane for vertical applications; and areas that will be landscaped or covered with grass shall have a minimum of one foot of DEP approved clean fill/top soil. The January 2019 CHASP addresses worker and community health and safety during redevelopment. Based upon our review of the submitted documentation, we have the following comments and recommendations to BSA: DEP finds the March 2019 RAP and January 2019 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., transportation/disposal manifests for removal and disposal of soil in accordance with applicable local, state, and federal laws and regulations; minimum of 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, etc.). By correspondence dated March 2, 2022, DEP states that it has no comments on the natural resources section of the EAS.

By correspondence dated March 2, 2022, the New York City Waterfront Revitalization Program (“WRP”) states that it has no comments on the WRP. Correspondence prepared by VHB, dated May 13, 2022, states that the window/wall attenuation requirement of 31 dBA specified in the 2014 14DME014Q Mayoral Override EAS is sufficient to maintain acceptable interior noise conditions.

By letter dated June 7, 2022, the New York City Department of Transportation (“DOT”) states that following the 2021 CEQR Technical Manual Level 1 (Trip Generation) and Level 2 (Trip Assignment) screening assessments, a detailed traffic analysis is not warranted as

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the site generated trips would not exceed the 50-vehicle trip threshold at any intersections in any peak hour. Also, following the Level 1 (Trip Generation) screening assessment, detailed pedestrian analysis is not warranted as the site generated pedestrian trip would not exceed the 200-pedestrian trip threshold in any peak hours. Therefore, NYC DOT concurs with the lead agency's determination that a detailed traffic and pedestrian analysis is not warranted. The applicant will be responsible for reconstructing sidewalks around the existing building and obtaining all required permits and approvals from NYC DOT in connection with sidewalk work. The applicant will be responsible for all costs associated with the design and installation of sidewalk, ramps, curb cuts or any other improvements around the site. The applicant will submit all the required drawings as per NYC DOT specifications and requirements for NYC DOT review and approval. NYC DOT will participate in the review process relating to all future modifications/construction around the site.

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 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 make each and every one of the required findings under Z.R. § 72-21 to *permit* the repurposing of an existing three-story plus cellar building to be occupied with UG 6B commercial offices and as-of-right community facility uses, contrary to Z.R. § 22-10; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved: July 18, 2022" — Thirteen (13) sheets; and *on further condition*:

THAT no lighting in the parking lot shall shed on adjacent residential properties;

THAT in the case of noise complaints from the adjacent residents, the owner shall install acoustical blankets on the chain link fence or otherwise address the noise complaints;

THAT the owner obtain modification of the restrictive declaration to allow the proposed use from the NYC EDC;

THAT the owner provide offsite parking;

THAT the owner meet the automobile trip generation rates for the project as shown in the submitted analysis through the provision of onsite and/or offsite parking;

THAT the owner must reconstruct sidewalks around the existing building and obtain all required permits and approvals from DOT in connection with sidewalk work, unless the applicant obtains an approval for an alternate solution from DOT;

THAT at the completion of the project and prior to occupancy of the cellar, a Professional Engineer ("P.E.") certified Remedial Closure Report shall be submitted to DEP for review and approval;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2021-43-BZ"), shall be obtained within four years, by July 18, 2026;

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 18, 2022.

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for continued hearing.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for decision, hearing closed.

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2019-32-BZ

APPLICANT – RothkrugRothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

2019-264-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, owner.

SUBJECT – Application September 11, 2019 – Variance (§72-21) to permit the development of school (UG 3) (Congregation Lev Bais Yaakov) contrary to ZR §33-121 (FAR) and ZR §33-431 (height of front wall and sky exposure). C1-2/R4 zoning district.

PREMISES AFFECTED – 3568 Nostrand Avenue, Block 7386, Lot 129, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for a adjourned hearing.

2020-64-BZ

APPLICANT – Jay Goldstein, Esq., for Congregation Ohr Eliyahu Inc., owner.

SUBJECT – Application August 13, 2020 – 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.

PREMISES AFFECTED – 85-94 66th Road, Block 3144, Lot 42 Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

2021-9-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Red Hook JV LLC, owner.

SUBJECT – Application January 15, 2021 – Variance (§72-21) to permit the development of a 15-story mixed-use residential, commercial and manufacturing building contrary to ZR §42-10 (Use), ZR §43-12 (FAR) and ZR §43-28 (Rear Yard). M2-1 zoning district.

PREMISES AFFECTED – 145-163 Wolcott Street, Block 574, Lot(s) 1, 23 and 24, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to March 27-28, 2023, at 10 A.M., for a adjourned hearing.

2021-41-BZ

APPLICANT – Akerman LLP, for Inwood HT Equities LLC, owner.

SUBJECT – Application June 23, 2021 – Variance (§72-21) to permit the development of a nine (9) story residential building contrary to height (ZR §23-662(a)) and parking (ZR §25-23). R7A & R7-2/C2-4 Special Inwood District.

PREMISES AFFECTED – 22-38 Cumming Street, Block 2237, Lot(s) 16 & 18, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2022-10-BZ

APPLICANT – Sherry and O’Neill, for RFR/K 55 Prospect Owner LLC, owner; Vivvi, Inc., lessee.

SUBJECT – Application February 4, 2022 – Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Vivvi*) contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to August 8-9, 2022, at 10 A.M., for continued hearing.

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PUBLIC HEARINGS
MONDAY-TUESDAY, JULY 18-19, 2022
2:00 P.M.

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

ZONING CALENDAR

2021-42-BZ

APPLICANT – Law Office of Lyra J. Altman, for Project L29 LLC, owner.

SUBJECT – Application June 11, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Ohr Shraga D’Veretzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). R2 zoning district.

PREMISES AFFECTED – 2901 Avenue L, Block 7629, Lot(s) 6 and 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for continued hearing.

2021-47-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hilda Lovera, owner.

SUBJECT – Application July 27, 2021 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-45 (required front yard). R3-2 zoning district.

PREMISES AFFECTED – 2100 Hermany Avenue, Block 3685, Lot 9, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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August 19, 2022

DIRECTORY

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2022-45-A

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2022-46-BZ

1005 Bedford Avenue, Block 1783, Lot(s) 0001, Borough of **Brooklyn, Community Board: 3**. Variance (§72-21) to permit the enlargement of an existing school (UG 3) (Talmud Torah D' Nitra) contrary to ZR §33-121 (Maximum Floor Area Ratio). R7A/C2-4 and R6B zoning districts. R7A/R6B/C2-4 district.

2022-47-BZ

2052 63rd Street, Block 5542, Lot(s) 0027, Borough of **Brooklyn, Community Board: 11**. Special Permit (§73-622) to permit the enlargement of an existing two-story, semi-detached home contrary to ZR §23-641 side yard regulations. R5 zoning district. R5 district.

2022-48-A

40-01 169th Street, Block 5344, Lot(s) 0015, Borough of **Queens, Community Board: 1**. Proposed enlargement of an existing one-family home partially located within the bed of a mapped street contrary to General City Law §35. R2A and M1-1 zoning districts. R2A/M1-1 district.

2022-49-BZ

71-34 73rd Street, Block 3690, Lot(s) 0022, Borough of **Queens, Community Board: 5**. Re-instatement (11-41) of a previously approved variance which permitted the operation of a knitting mill (UG 17B) with accessory storage which expired on March 19, 2002; Change of use to a UG(17A) contracting establishment. Extension of Time to Obtain a R4-1 district.

2022-50-BZ

2329 Story Avenue, Block 3699, Lot(s) 0071, Borough of **Bronx, Community Board: 2**. Re-instatement (§11-41) of a previously approved variance which permitted the operation of a manufacturing establishment (UG 11A) for optical goods which expired on April 20, 2012; Amendment (§11-413) to permit the change of use to a contractor establishm R3-2 district.

2022-51-BZ

107-20 154th Street, Block 10131, Lot(s) 0030, Borough of **Queens, Community Board: 12**. Variance (§72-21) to permit the development of a two-story residential dwelling contrary to underlying bulk requirements. R5 zoning district. R5 district.

2022-52-BZ

2221 East 13th Street, Block 7374, Lot(s) 0077, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling contrary to underlying bulk requirements. R4 zoning district. R4 district.

2022-53-BZ

33 Hempstead Avenue, Block 3808, Lot(s) 4, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA. R3-1 district.

2022-54-BZ

128 1/2 Roxbury Avenue, Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application) within Breezy Point. R4 ZD, LDG R4 district.

2022-55-BZ

175 Father Capodanno Boulevar, Block 3122, Lot(s) 118, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA. R3-1 district.

2022-56-BZ

231 Moreland Street, Block 3738, Lot(s) 30, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA. R3-1 district.

DOCKETS

2022-57-A

24A Mesereau Court, Block 8797, Lot(s) 101, Borough of **Brooklyn, Community Board: 15**. Legalization of the reconstruction of a single family home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program not fronting on a legally mapped street contrary to General City Law §36. Sheepshead Bay R4-1 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, OCTOBER 3-4, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, October 3rd, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday October 4th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

245-32-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Raso, owner.

SUBJECT – Application December 23, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive repair facility (UG 16B) which expired on July 9, 2022; Amendment to permit an increase of parking and change in hours of operation. R6B/C2-3 zoning district

PREMISES AFFECTED – 123-05 101st Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

779-57-BZ

APPLICANT – Nasir J. Khanzada, for Louis D. Katz, owner.

SUBJECT – Application July 13, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 11, 2013 - Amendment to permit the legalization of the conversion of automotive repair bays to auto alarm and audio system installation. Waiver of the Board's Rules of Practice and Procedures. C2-4/R6A zoning district.

PREMISES AFFECTED – 137-25 Jamaica Avenue, Block 9618, Lot 30, Borough of Queens.

COMMUNITY BOARD #4Q

348-75-BZ

APPLICANT – Eric Palatnik, P.C., for Moises A. Villadelgado, owner.

SUBJECT – Application March 11, 2022 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement of a then existing two-story building occupied as an animal hospital with an accessory caretaker's apartment which expires on April 3, 2022. R3-2 and R2 zoning district.

PREMISES AFFECTED – 1050 Forest Avenue, Block 315, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #1SI

617-80-BZ

APPLICANT – Eric Palatnik, P.C., for J & Simcha, Inc., owner.

SUBJECT – Application August 25, 2020 – Extension of Term of a previously granted Variance (§72-21) of a UG 9 catering establishment which expires on July 7, 2020. M1-1 zoning district.

PREMISES AFFECTED – 770/780 McDonald Avenue, Block 5394, Lot(s) 1 & 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

129-97-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application November 8, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on November 4, 2018; Waiver of the Board's Rules of Practice and Procedures. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-65 Cross Island Parkway, Block 4697, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Top Development Corporation, owner.

SUBJECT – Application June 6, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a three-story community facility (house of worship UG 4) which expired on May 6, 2022. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

216-13-BZIV & 217-13-AII

APPLICANT – Rampulla Associates Architects, LLP, for Barclay Boardwalk, LLC, owner.

SUBJECT – Application June 21, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a one (1) story Eating & Drinking Establishment (UG 6) which expired on June 24, 2022. R3X Special Richmond District.

PREMISES AFFECTED – 750 Barclay Avenue, Block 6397, Lot(s) 7, 9, 12, 18 (tent.7), Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

102-15-A

APPLICANT – Eric Palatnik, P.C., for 1088RA10309, LLC, owner.

SUBJECT – Application July 6, 2022 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a previously approved waiver of General City Law §35 and ZR §107-461 pursuant to ZR §72-01(g) which expired on August 21, 2022. R3-2 Special Richmond Purpose District.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

2016-4230-BZ

APPLICANT – Eric Palatnik, P.C., for Muslim American Society of Upper New York, owner.

SUBJECT – Application May 11, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a House of Worship (UG 4A) which expired on April 18, 2022. C8-1 zoning district.

PREMISES AFFECTED – 1912 Amethyst Street, Block 4254, Lot 11, Borough of Bronx.

COMMUNITY BOARD #11BX

2017-299-BZ

APPLICANT – Duane Morris LLP, for Douglaston Shopping Center, LLC, owner.

SUBJECT – Application June 8, 2022 – Extension of Time to complete construction and obtain a Certificate of Occupancy of a previously approved variance which permitted the increase in the degree of nonconformance of an existing nonconforming shopping center and a reduction in parking, which expired on May 8, 2022. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

2019-58-BZ

APPLICANT – Law Office of Jay Goldstein, for JSB Realty No. 2, LLC, owner; CEC Entertainment, LLC d/b/a Chuck E. Cheese, lessee.

SUBJECT – Application April 5, 2022 – Extension of Term of a previously approved Special Permit (§73-244) permitting the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (Chuck E. Cheese's) which expires on July 23, 2022. C2-2 zoning district.

PREMISES AFFECTED – 133-35 79th Street, Block 11359, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

APPEALS CALENDAR

2021-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Block 7206 Industrial LLC, owner.

SUBJECT – Application March 16, 2021 – Proposed development of a two-story office and warehouse building (UG 6 & UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 500 Industrial Loop, Block 7206, Lot 66, Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-16-A

APPLICANT – Law Office of Fredrick A. Becker, for Ezra Dayan, owner.

SUBJECT – Application March 8, 2022 – An administrative appeal challenging the Department of Buildings' final determination. The appeal challenges the DOB approval that an Auto Laundry does not comply with required reservoir spaces. C8-2 zoning district.

PREMISES AFFECTED – 664 Coney Island Avenue, Block 5378, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2022-28-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD, Diane Rivela, Pres., owner.

SUBJECT – Application May 19, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 15 Bedell Street, Block 7702, Lot 134, Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-29-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD, Diane Rivela, Pres., owner.

SUBJECT – Application May 19, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 17 Bedell Street, Block 7702, Lot 135, Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

2022-30-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD, Diane Rivela, Pres., owner.

SUBJECT – Application May 19, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 19 Bedell Street, Block 7702, Lot 136, Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-19-A

APPLICANT – Rothkrug Rothkrug & Spector, for FS Storer LLC, owner.

SUBJECT – Application April 4, 2022 – Proposed development of a two-story warehouse and office building not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special Richmond District.

PREMISES AFFECTED – 121 Storer Avenue, Block 7311, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

ZONING CALENDAR

2020-50-BZ

APPLICANT – Law Office of Lyra J. Altman, for Haim Haddad, owner.

SUBJECT – Application June 8, 2020– 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.

PREMISES AFFECTED – 2328 Olean Street, Block 7677, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2021-59-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Union Turnpike, LLC, owner; Starbucks Corporation, lessee.

SUBJECT – Application October 3, 2022 – Special Permit (§73-243) to permit an accessory drive-through accessory to an Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-23. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 161-09 Union Turnpike, Block 6831, Lot 118, Borough of Queens.

COMMUNITY BOARD #8Q

2021-83-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Etzheim Inc., owner.

SUBJECT – Application December 2, 2021 – Variance (§72-21) to permit the construction of a House of Worship contrary to ZR §24-111 (floor area), ZR §24-35 (side yards) and ZR §25-30 (parking). R1-2 zoning district.

PREMISES AFFECTED – 80-74 188th Street, Block 7259, Lot 26, Borough of Queens.

COMMUNITY BOARD #8Q

2022-31-BZ

APPLICANT – Fox Rothschild LLP, for 337 Garage, LLC, owner; The Browning School, lessee.

SUBJECT – Application May 31, 2022 – Variance (§72-21) to permit the conversion and enlargement of an existing building to facilitate a UG 3 school (The Browning School) contrary to underlying rear yard and height regulation. C2-5/R8B zoning district.

PREMISES AFFECTED – 337 East 64th Street, Block 1439, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #8M

2022-49-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 73rd Realty LLC, owner.

SUBJECT – Application July 29, 2022 – Re-instatement (11-41) of a previously approved variance which permitted the operation of a knitting mill (UG 17B) with accessory storage which expired on March 19, 2002; Change of use to a UG(17A) contracting establishment. Extension of Time to Obtain a Certificate of Occupancy which expired on March 19, 1993; Waiver of the Board’s Rules of Practice and Procedures. R4-1 zoning district.

PREMISES AFFECTED – 71-34 73rd Street, Block 3690, Lot 22, Borough of Queens.

COMMUNITY BOARD #5Q

Shampa Chanda, Acting Chair/Commissioner

MINUTES

PUBLIC HEARINGS
MONDAY-TUESDAY, AUGUST 8-9, 2022
10:00 A.M.

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

COMPLIANCE HEARING

2019-27-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for Congregation Pnei Menachem, owner.

SUBJECT – Application June 9, 2022 – 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 24-11 (lot coverage) R5 zoning district.

PREMISES – 4533 18th Avenue, Block 5439, Lot 0020. Borough of Brooklyn

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

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

Negative.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

SPECIAL ORDER CALENDAR

360-49-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilts Petroleum Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on May 2, 2006; Waiver of the Board's Rules. R4-1 zoning district.

PREMISES AFFECTED –69-05 Eliot Avenue, Block 2838, Lot 38, Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedure and extension of term of a variance, under Z.R. § 11-411, which permitted the use of the Premises as gasoline service station with accessory uses

and expired on February 25, 2015.

A public hearing was held on this application on November 15, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2022, and then to decision on August 8, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 5, Queens, recommends approval of this application.

The Premises are located on the northeast corner of Eliot Avenue and 69th Street, within an R4-1 zoning district, in Queens. With approximately 100 feet of frontage along Eliot Avenue, 10 feet of frontage along 69th Street, and 10,000 square feet of lot area, the Premises are occupied by an existing gasoline service station (2,380 square feet of floor area) with accessory convenience store and repair shop.

The Board has exercised jurisdiction over the Premises since September 13, 1949, when, under the subject calendar number, the Board granted a variance to construct and maintain a gasoline service station. Subsequently, under the subject calendar number, the grant was amended and the term extended at various times.

Most recently, on May 2, 2006, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on February 25, 2015, on condition that the term 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 variance having expired, the applicant now seeks an extension. Because this application was filed more 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)(3), of the Board's Rules to permit the filing of this application. Pursuant to the Board's Rules, the applicant demonstrates continuous use of the Premises from the expiration of the term through the filing of this application.

The applicant represents that no work is proposed and there are no changes to the Premises; however, the applicant notes that the signage at the Premises is changing from "Getty" to "BP". The Premises operate as a 24-hour gasoline service station and convenience store; the automotive repair use is open 8:00 a.m. to 5:00 p.m., Monday through Friday, and is closed on weekends. The applicant submits an operational plan committing that that a security camera system monitoring the Premises will be utilized to view customer vehicles via a closed-circuit television monitor in the attendant area so that customers can be observed; an attendant will monitor both the property

MINUTES

and the sidewalk during normal business hours to ensure vehicles visiting the station and repair shop will only park on site in the four designated parking stalls and not on the sidewalk. If vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e. side street) until such time an on-site parking stall becomes available. The operator will monitor the Premises and notify operators to remove items; if it is observed that items being sold outside, the operator will ask that they be placed inside the building. A site maintenance advisor visits the Premises at least once a month: if the Premises are not being managed in accordance with the BSA-approved plans or resolution, the site maintenance advisor will give the operator a chance to correct and will inform the operator that they are out of compliance. The site maintenance advisor will have the non-compliances corrected as necessary and bill the operator if the operator does not work to come into compliance.

Over the course of hearings, the Board directed the applicant to maintain the lighting at the Premises so as to not negatively impact nearby properties. Further, in response to Board comments, the applicant relocated the two existing air stations away from the sidewalk and the vacuum machine away from the residential property line, proposed a masonry trash enclosure with steel gates, and demonstrated painting of the masonry wall.

The Fire Department states, by letter dated November 9, 2021, that a review of records indicates that the Premises is current with Fire Department 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 *amend* the resolution, dated September 13, 1949, as amended through May 2, 2006, so that as amended this portion of the resolution shall read: “to permit the operation of the Premises as an gasoline service station with accessory uses for a term of 10 years, to expire on August 8, 2032, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Board Approved August 8, 2022” —Seven (7) sheets; and *on further condition*:

THAT the term of the variance shall expire August 8, 2032;

THAT the hours of operation for the automotive repair use is limited to 8:00 a.m. to 5:00 p.m., Monday through Friday, closed on weekends.

THAT a security camera system monitoring the Premises shall be utilized to view customer vehicles via a closed-circuit television monitor in the attendant area so that customers can be observed;

THAT an attendant shall monitor both the Premises and the sidewalk during normal business hours to ensure vehicles visiting the station and repair shop park only on the Premises in the four designated parking stalls and not on the sidewalk;

THAT if vehicles are observed parking on the sidewalk, the vehicle owner shall be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e. side street) until such time an on-site parking stall becomes available;

THAT the operator shall monitor the Premises and notify operators to remove items;

THAT if it is observed that items being sold outside, the operator shall require that they be placed inside the building.

THAT a site maintenance advisor visit the Premises at least once a month: if the Premises are not being managed in accordance with the BSA-approved plans or resolution, the site maintenance advisor will give the operator a chance to correct and will inform the operator that they are out of compliance; the site maintenance advisor will have the non-compliances corrected as necessary and bill the operator if the operator does not work to come into compliance;

THAT lighting sources adjacent to residential uses shall be shielded from direct view and maintained to minimize any adverse effects on nearby residential uses;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 360-49-BZ”), shall be obtained within 18 months, by February 8, 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, August 8, 2022.

808-55-BZ

APPLICANT – Eric Palatnik, P.C, for 35 Bell Realty Inc., owner.

SUBJECT – Application September 29, 2020 – Extension of Term (§ 11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on March 27, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, Block

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6169, Lot 6, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application, pursuant to Z.R. § 11-411, for an extension of term for variance previously granted by the Board, which permitted the operation of a Use Group (“UG”) 16B automotive repair shop and expired on March 27, 2021.

A public hearing was held on this application on November 29, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2022, and then to decision on August 8, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. Community Board 11, Queens, recommends approval of this application on condition that, in addition to all prior Board conditions, the sidewalks are repaired, weather permitting.

The Premises are located at the northwest intersection of Bell Boulevard and 35th Avenue, within an R4 (C2-2) zoning district, in Queens. With approximately 100 feet of frontage along Bell Boulevard, 99 feet of depth, and 9,903 square feet of lot area, the Premises are occupied by a one-story, automotive service station with a convenience store and accessory parking.

The Board has exercised jurisdiction over the Premises since April 3, 1956, when, under the subject calendar number, the Board granted a variance in the application of the use district regulations of the building zone resolution for a term of 15 years, expiring on April 3, 1971, to permit the Premises to be occupied as proposed and as indicated on the plans filed with the application, on condition that all buildings and uses on the Premises be removed and the Premises be leveled substantially to the grade of the abutting streets; all Premises be designed, constructed, and arranged as indicated on such plans as amended by revised plans; the accessory building be of the design and arrangement and location as proposed; there be no cellar under such building; there be no windows opening in the walls of such building to the adjoining Premises; the building be faced with face brick on all sides; the accessory building in all other respects comply with the requirements of the Building Code; there be erected from the proposed wall of such buildings along the southerly lot line to Bell Boulevard a masonry wall, with brick agreeing with the accessory building, not less than 5'-6" in height and properly coped; such wall may, however, be reduced to a height of 4'-6", within 10 feet of the building line of Bell Boulevard; along the westerly lot line from the accessory building a similar brick wall be constructed within 25 feet of the 35th Avenue building line; from the end of such wall there be a privet hedge of similar height as the wall, maintained along the

balance of the westerly lot line to the street building line of 35th Avenue to comply with the restrictive covenant; pumps be of a low approved type and erected not nearer than 15 feet from the bases of the pumps to the building line; curbs cuts be restricted to two curb cuts to Bell Boulevard, each 30 feet in width, located where shown and two similar curb cuts to 35th Avenue; no portion of any curb cut be nearer than five feet to a lot line as prolonged; at the intersection there be erected a block of concrete extending for a distance of not less than five feet along either building line from the intersection and not less than 12 inches in height; the number of gasoline storage tanks not exceed ten 550-gallon approved tanks; the balance of the Premises where not occupied by accessory building and pumps be paved with concrete or asphaltic pavement; sidewalks and curbing abutting the Premises be reconstructed or repaired to the satisfaction of the Borough President; signs be restricted to permanent signs attached to the façade of the accessory building and to the illuminated globes of the pumps excluding all roof signs and temporary signs but permitting the erection within the Premises at the intersection of a post standard, where shown, for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not more than four feet; such a sign be at right angles to Bell Boulevard building line; there may be minor repairs for adjustment only maintained within the accessory building and with hand tools; for a similar term there may be parking of cars provided such parking does not interfere with the servicing of the station; such portable firefighting appliances be maintained as the Fire Commissioner direct; all permits be obtained including a certificate of occupancy and all work completed within the requirements of the Zoning Regulation.

On March 26, 1959, under the subject calendar number, the Board amended the resolution as to the time within which to obtain permits and complete the work on condition that in view of the statement by the applicant that all permits have been obtained and construction has been started, all permits required including a certificate of occupancy be obtained and all work completed within the requirement of Section 22A of the Zoning Resolution from March 26, 1959.

On October 12, 1971, 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 ten years, to expire on April 3, 1981, on condition that other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On January 20, 1981, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on April 3, 1991, on condition that the station be operated at all times in such a fashion to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by January 20, 1982.

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On April 24, 1990, under the subject calendar number, the Board further amended the resolution to permit a change in the design and arrangement of the existing automotive service station including the addition of an accessory retail convenience store and attendant's office, the erection of a 48' x 66'-6" steel canopy over four new gasoline pump islands with new six hose self-serve pumps, the installation of a 8' x 10' corrugated steel trash enclosure and the relocation of curb cuts on 35th Avenue on condition that all work substantially conform with the drawings filed with the application; the landscaping shown on the approved drawings be maintained and replaced when necessary; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; all applicable laws, rules, and regulations be complied with and that substantial construction be completed within one year, by April 24, 1991; and other than as amended, the resolution be complied with in all respects.

On June 25, 1991, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on April 3, 2001, on condition that substantial construction be completed; a new certificate of occupancy be obtained within one year, by April 24, 1992; 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.

On March 27, 2001, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on March 27, 2011 on condition that the conditions appear on the certificate of occupancy; the Premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended, the resolution be complied with in all respects; and substantial compliance be completed and a new certificate of occupancy be obtained within two years, by March 27, 2003.

On May 12, 2012 under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on March 27, 2021, on condition that all use and operations substantially conform to plans filed with the application; the term of the grant expire on March 27, 2021; the site be maintained free of debris and graffiti; the conditions be reflected on the certificate of occupancy; all conditions from the 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.

By letter dated November 18, 2021, the Fire Department states that a review of its records indicates that the subject automotive service station is current with their Fire Department permits concerning the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry chemical) system.

Based upon the foregoing, the Fire 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 term of the variance having expired, the applicant now seeks an extension. The applicant represents that the proposed extension of term would have no impact on the character of the area in which it is located, as the Premises has been a gasoline station with accessory uses for more than seven decades in a mixed-use neighborhood. For example, the applicant notes that Bell Boulevard is a major street with numerous automotive uses in the area including a gas station across the street as well as a number of car dealerships nearby on Northern Boulevard. The applicant further states that it does not seek any physical changes to the subject Premises.

Over the course of hearings, the Board requested that the applicant provide noise attenuation and a lumens' spread study for the subject site as well as revise its operational plan to clarify its plan for site maintenance. In response, the applicant updated the proposed plans to include noise attenuation measures including a proposed six-foot high fence around vacuum tower and notes on reorienting the lighting toward the parking area. The Board notes that while a 0.0 lumens level at the subject property line is not feasible, the lighting level shall be consistent with all applicable City regulations. Additionally, the applicant revised its operational plans clarifying the role of a site maintenance officer and committing to the following:

Hour of Operation

The hours of operation for this station are as follows:

Gas Filling Operations: 24 hours a day, 7 days a week

Trash Control/ Pick Up

The BP Products N.A., Inc. ("BP") gas service station (the "Station") is equipped with 6-foot-high masonry trash enclosure with chain link fence gates with opaque slats which face away from the adjacent residential district at the rear of the site. Trash is loaded into a dumpster staged within this enclosure and is picked up by Royal Waste Services on Monday and Friday nights every week. There are trash receptacles located throughout the site for use by customers, which are emptied into the dumpster at least twice a day. Station employees police the station for litter as appropriate.

Rodent Control

The Station is contracted with Sayonara Pest Control to treat the site for rodents and other pests every other week and can be called in more frequently if needed. All areas of the Station, including but not limited to the trash enclosure, are inspected. Trash is controlled as detailed above and the site is kept clean to preclude an environment conducive to the generation of rodents and other pests.

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Monitoring

The BP Products N.A., Inc. ("BP") gas service station is equipped with security cameras on the building that monitor the entirety of the site and function 24 hours a day, 7 days a week. The security camera system will additionally be utilized to view customer vehicles via a closed-circuit television monitor in the attendant area so that customers can be observed. An attendant will monitor both the property and the sidewalk during normal business hours to ensure vehicles visiting the station will only park on site in designated parking stalls and not on the sidewalk. If vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e., side street) until such time an on-site parking stall becomes available. BP will monitor the site and notify operators to remove items, if BP observes items being sold outside. BP will ask that they be placed inside the building. A BP site maintenance advisor visits the site at least once a month. If the site is not being managed per the BSA resolution, the BP site maintenance advisor will give the operator a chance to correct and will inform the operator that they are out of compliance. BP will correct the non-compliances as necessary and bill the operator if the operator does not work to come into compliance.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans 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 3, 1956, as amended through May 15, 2012, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on March 27, 2031, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Board Approved: August 8, 2022 – Eight (8) sheets'; and *on further condition*;

THAT the term of the grant shall expire on March 27, 2031;

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

THAT proposed site improvements, including, but not limited to, noise, lighting, and landscaping, shall be made in compliance with the approved plans;

THAT all lighting sources which are located next to a residential use shall be shielded from direct view to minimize any adverse effects on surrounding residences;

THAT the proposed improvements shall be completed prior to issuance of certificate of occupancy;

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. 808-55-BZ'), shall be obtained within 18 months, by March 19, 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, August 8, 2022.

827-55-BZIII

APPLICANT – Eric Palatnik, P.C, for Spartan Petroleum Corp., owner.

SUBJECT – Application July 15, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which is set to expire on January 31, 2021. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, Block 1361, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application, pursuant to Z.R. § 11-411, for an extension of term for variance previously granted by the Board, which permitted the operation of a Use Group ("UG") 16B automotive repair shop and expired on January 31, 2021.

A public hearing was held on this application on November 29, 2021, after due notice by publication in *The City Record*, with continued hearings on May 9, 2022 and July 18, 2022, and then to decision on August 8, 2022. Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood. Community Board 13, Queens, recommended to approve this application on condition that all cars to be serviced must be held on the service station property and not in front of neighboring private homes.

The Premises are located at the southwest intersection of 139th Avenue and 246th Street, within an R3-2 (C1-3) zoning district, in Queens. With approximately 14 feet of frontage along 139th Avenue, 100 feet of frontage along 246th Street, 118 feet of frontage along South Conduit Avenue, and 4,476 square feet of lot area, the Premises are

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occupied by a one-story gasoline service station and automotive repair shop.

The Board has exercised jurisdiction over the Premises since January 31, 1956, when, under the subject calendar number, the Board granted a variance to permit, in a retail use district, the erection and maintenance of a gasoline service station, non-automatic car wash, lubritorium, oil selling, sales and to permit curb cuts less than 75 feet from the residence use district, for a term of 15 years to expire on January 31, 1971, on condition that all work be done substantially as shown on plans filed with the application except that the 5'-6" masonry wall shown along the building line of 139th Avenue and the building line of 246th Street have face brick on the both sides agreeing with the face brick used on the accessory building; a similar 8" brick wall extend along the southwesterly lot line from the service building to the building line of South Conduit Avenue, the first one starting 10 feet from the corner of 139th Avenue and the second one starting 75 feet from the corner of 139th Avenue; these curb cuts have 1'-6" splays at each end; the gasoline pumps set back 15 feet from the South Conduit Avenue building line, as shown; the building be constructed of brick with a face brick front and rear wall on the 246th Street side; the women's toilet in the service building be transposed to the position shown for the men's toilet and the men's toilet open not to the exterior from the outside wall but in through the sales room; signs be restricted to a permanent sign, attached to the façade of the accessory building, and the illuminated globes of the pumps, excluding all roof and temporary signs, but permitting, one brand sign on a post standard located on the 139th Avenue end of the South Conduit Avenue building line, which may extend for not more than four feet beyond the building line; the Premises be paved with concrete or asphaltic pavement; portable fire-fighting appliances be maintained as the fire commissioner direct; gasoline storage tanks be limited to eight approved 550-gallon tanks; and all permits required be obtained, including a certificate of occupancy and all work completed within the requirements of the Zoning Resolution.

On September 18, 1956, under the subject calendar number, the Board amended the resolution to permit two additional 550-gallon approved gasoline storage tanks, making a total of 10 such tanks; the reduction in size of the accessory building from 48 feet to 44'-6", as proposed; the increase in the size of the curb cuts from South Conduit Avenue without increasing the number of such curb cuts not exceed two, each 35 feet in width to South Conduit Avenue, as passed by the Borough Superintendent under N.B. Application 4413/55, dated September 14, 1956, as shown on plans filed with the request for amendment, on condition that, in all other respects, the resolution be complied with.

On February 19, 1957, under the subject calendar number, the Board further amended the resolution to extend the time to obtain permits and complete the work as in view of the statement by the applicant that plans have been approved by the Department of Buildings and that work is about to commence, on condition that all permits required

including a certificate of occupancy be obtained and all work completed within the requirements of the Zoning Resolution.

On June 11, 1957, under the subject calendar number, the Board further amended the resolution so that in the event the owner desires to make a minor modification in the arrangement of the Premises and to install an additional curb cut to 139th Avenue, such changes may be made as indicated on revised plans, on condition that in all other respects, the resolution, where not inconsistent with the amended resolution, be complied with.

On July 7, 1965, under the subject calendar number, the Board further amended the resolution so that 30 feet of brick wall along the building line of 246th Street may be altered substantially as shown on the revised drawing, on condition that other than as amended, the resolution be complied with in all respects.

On March 30, 1971, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on January 31, 1981, on condition that other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On February 3, 1981, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on January 31, 1981, on condition that a full width sidewalk be installed on South Conduit Avenue and 246th Street frontages, repair coping on the wall fronting 246th Street; this station be operated at all times in such a fashion to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by February 3, 1982.

On November 9, 1993, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the time to obtain a certificate of occupancy, on condition that a new certificate of occupancy be obtained within 33 months from February 13, 1992, by November 13, 1994.

On September 10, 2002, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term of the variance, pursuant to Z.R. § 11-411, to permit the change of use within the existing building from salesroom to accessory food store and extend the term of the variance for ten years, to expire on January 31, 2011, on condition that the Premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; the Premises be maintained graffiti-free at all times; there be no parking of automobiles on the sidewalks at any time; there be no coin-operated self-service car washes on the Premises; the above conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained within one year, by September 10, 2003; the expiration date of the variance be indicated on the certificate of occupancy; the approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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 Resolutions, 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 September 20, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term of the variance for ten years, to expire on January 31, 2021, on condition that all use and operation substantially conform to plans filed with the application; the term of the grand expire on January 31, 2021; all exterior lighting be directed downward and away from adjacent residential uses; the site be maintained free of debris and graffiti; all signage comply with the Board-approved signage plan; the above conditions appear on the certificate of occupancy; 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 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 proposed extension of term would have no impact on the character of the area in which it is located, as the Premises have been a gasoline station with accessory uses for more than six decades. Specifically, the applicant states that because South Conduit Street is a major street with numerous automotive uses in the area including another gas station across the street as well as a car wash and a tire and auto shop to the east of Hook Creek Boulevard. The applicant represents that no physical changes are proposed at the Premises.

By letter dated November 18, 2021, the Fire Department states that a review of their records indicates that the subject automotive repair service station is current with their Fire Department permits concerning the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry-chemical) system. Based upon the foregoing, the Fire 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.

Over the course of hearings, the Board expressed concerns about the trash enclosure at the site, which is a rolling dumpster, the distance from the gas pump to the property line, and maintenance at the site. Herein, the Board notes that the distance from the gas pump island to the property was approved by the Fire Department in 2016 as a pre-existing, nonconforming condition under FP Index No. 1604010, dated April 12, 2016, as part of previous tank replacement plan. Furthermore, as the applicant states that it has chosen to maintain a rolling dumpster because the

subject property is small and irregular, the Board should pay attention to the status of the trash enclosure at this site.

In response to the concerns regarding maintenance at the site, the applicant submitted a revised operational plan, committing to the following:

Hour of Operation

The hours of operation for this station are as follows:

Full service/Gas Filling Operations: 24 hours a day, 7 days a week. Repair Shop: 6 AM to 6 PM, Monday to Saturday, closed on Sunday.

Car Wash Station Use/ Monitoring

The BP Products N.A., Inc. ("BP") gas service station is equipped with security cameras on the building that monitor the entirety of the site and function 24 hours a day, 7 days a week. An attendant will monitor both the property and the sidewalk during normal business hours to ensure vehicles visiting the station and repair shop will only park on site in designated parking stalls and not on the sidewalk. If vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e., side street) until such time an on-site parking stall becomes available. BP will monitor the site and notify operators to remove items, including tires, if BP observes items being sold outside. BP will ask that they be placed inside the building. A BP site maintenance advisor visits the site at least once a month. If the site is not being managed per the BSA resolution, the BP site maintenance advisor will give the operator a chance to correct and will inform the operator that they are out of compliance. BP will correct the noncompliances as necessary and bill the operator if the operator does not work to come into compliance. The station has 5 proposed parking stalls.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans 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 January 31, 1956, as amended through September 20, 2011, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on January 31, 2031, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Board Approved: August 8, 2022 – Five (5) sheets'; and *on further condition*;

THAT the term of the grant shall expire on January 31, 2031;

THAT the exterior lighting shall be directed downward and away from adjacent residential uses;

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

THAT all signage shall comply with the Board approved signage plan;

THAT there be no storage or repair of buses and trucks at the subject Premises;

THAT proposed improvement to the subject Premises shall be made pursuant to the Board approved plans;

THAT the proposed improvements shall be made prior to the issuance of the certificate of occupancy;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 827-55-BZ'), shall be obtained within 18 months, by March 16, 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, August 8, 2022.

227-10-BZ

APPLICANT – Eric Palatnik, P.C, for Power Test Realty Corporation, owner.

SUBJECT – Application June 12, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) to expire on September 20, 2021. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application for an extension of term, pursuant to Z.R. § 11-411, for a variance previously granted by the Board, which permitted the operation of a Use Group ("UG") 16B automotive service station and expired on September 20, 2021.

A public hearing was held on this application on November 30, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 10, 2022, and then to decision on August 8, 2022. Vice-Chair Chanda and

Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood.

The Premises are located on the south side of Northern Boulevard, between 204th Street and Clearview Expressway, within an R3 (C2-2) zoning district, in Queens. With approximately 150 feet of frontage along Northern Boulevard, 100 feet of depth, and 15,000 square feet of lot area, the Premises are occupied by a one-story, automotive repair shop and sales area.

The Board has exercised jurisdiction over the Premises since October 11, 1955 when, under BSA Cal. No. 212-51-BZ, the Board granted a variance in the application of the use district regulations of the Zoning Resolution for a term of 15 years, to expire on October 11, 1970, to permit the Premises to be occupied as a gasoline service station and accessory uses, substantially as proposed and as indicated on plans filed with the application, on condition that all existing uses on the Premises be removed; the Premises be levelled substantially to the grade of Northern Boulevard and be arranged and constructed as indicated on the BSA-approved plans; there be no cellar under the accessory building and in all other respects comply with the requirements of the Building Code; the design be as proposed, and the building faced with face brick; there be no windows in the rear opening on adjoining Premises; pumps be erected substantially where shown, but not event nearer than 15 feet to the street building line; the curb cuts be restricted each to 30 feet in width, located substantially where shown, with no portion of any curb cut nearer than 5'-6" in height of face brick agreeing with the face brick of the accessory building and properly coped; along the side lot lines to the east and west, there be erected on a masonry base a woven wire fence of the chain link type to a total height of not less than 5'-6"; the number of gasoline storage tanks not exceed 12 550-gallon approved tanks; signs be restricted to a permanent sign attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all temporary signs and roof signs but permitting the erecting within the Premises, toward the west as shown, of a post standard for supporting a sign, which may be illuminated, advertising 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 fronting on the Premises be repaired or restored to the satisfaction of the Borough President; such portable fire-fighting appliances be maintained as the Fire Commissioner direct; for a similar term, there may be parking and storage of cars awaiting servicing provided that such cars do not interfere with the servicing of the station; there may be minor repairing carried on within the accessory building only and with hand tools only for adjustment; all permits be obtained, a certificate of occupancy be obtained, and all work completed within the requirements of the Zoning Resolution.

On January 5, 1971, under BSA Cal. No. 212-51-BZ, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term of the variance for ten years, to expire on October 11, 1980, on condition

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that other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On October 10, 1972, under BSA Cal. No. 212-51-BZ, the Board further amended the resolution to permit that the accessory buildings may be altered substantially as shown on revised drawings of proposed conditions on condition that other than as amended the resolution be complied with in all respects.

On September 30, 1980, under BSA Cal. No. 212-51-BZ, the Board further amended the resolution to extend the term of the variance for ten years, to expire on October 11, 1990, on condition that this station be operated at all times in such a fashion to minimize traffic congestion; other than as amended, the resolution be complied with in all respects; a new certificate of occupancy be obtained within one year, by September 30, 1981.

On November 17, 1992, under BSA Cal. No. 212-51-BZ, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term of the variance for 10 years, to expire on October 11, 2000, on condition that there be no open storage on Premises; the planting be maintained and replaced when necessary; the fencing be adequately maintained; the Premises be maintained graffiti free and in substantial compliance with present conditions drawings; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by November 17, 1993.

On September 20, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit, pursuant to Z.R. § 11-411, the reinstatement, extension of term, extension of time to obtain a certificate of occupancy, and amendment to the previously-approved plans for a prior Board approval of an automobile service station with accessory uses (UG 16), on condition that any and all work substantially conform to drawings as they apply to the objection noted, filed with the application; the term of the grant be for ten years, to expire on September 20, 2021; the lot be kept free of debris and graffiti; all signage on the site comply with C2 zoning district regulations; parking on the site be limited to vehicles awaiting service; landscaping and fencing be maintained in accordance with the BSA-approved plans; the above conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by September 20, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; this approval is 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 April 26, 2016, under the subject calendar number,

the Board further amended the resolution to legalize existing signage, curb cuts and an on-site convenience store with 135 square feet of retail selling floor area, add a canopy, replace gasoline storage tanks, and add an ADA-accessible ramp and accessory concrete walk, on condition that all work substantially conform to drawings, filed with the application; lighting be directed downwards so as to not shine onto neighboring properties; all light fixtures be NYC-approved; 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 specifically cited 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) 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 proposed extension of term of the Premises would have no impact on the character of the area in which it is located, as the Premises has been a gasoline station with accessory uses for more than seven decades in a mixed-use neighborhood. Furthermore, the applicant states that Northern Boulevard is a major street with numerous automotive uses in the area including an automotive repair shop across the street as well as car sales shop across Clearview Expressway.

Over the course of hearings, the Board expressed concerns about maintenance at the site, including the landscaping, drainage, and parking. In response, the applicant revised the proposed plans to provide wheel stops and demonstrate the proposed planting. Moreover, the applicant submitted video of the drainage at the site, which captures the drainage from the two cleaning towers at the Premises going into the site, and not off site.

Additionally, the applicant submitted an operational plan, committing to the following:

Hours of Operation

The hours of operation for this station are as follows:

Gas Filling Operations: 24 hours a day, 7 days a week

Repair Shop: 8 a.m. to 7 p.m., Monday to Friday;
8 a.m. to 5 p.m., Saturday; 9 a.m. to 2 p.m.
Sunday

Car Wash Stations: 7 a.m. to 10 PM, 7 days a week

Car Wash Station Use/ Monitoring

The BP Products N.A., Inc. ("BP") gas service station is equipped with security cameras on the building that monitor the entirety of the site and function 24 hours a day, 7 days a week. The security camera system will additionally be utilized to view customer vehicles via a closed-circuit television monitor in the attendant area so that customers utilizing the car wash stations

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(herein the “stations”) can be observed. In the rare case customer vehicles waiting to use the stations are queued in the Northern Boulevard Right of Way, the station manager will ask these customers to pull into an available parking stall until such time a station becomes available. If not parking stalls are available, the customer will be asked to leave and return at a later time when a station and/ or parking stall becomes available. Additionally, a sign(s) will be posted in the vicinity of the westernmost driveway asking customers to not block the driveway/ roadway and to utilize available parking stalls while waiting to use a station. An attendant will monitor both the property and the sidewalk during normal business hours to ensure vehicles visiting the station and repair shop will only park on site in designated parking stalls and not on the sidewalk. If vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e., side street) until such time an on-site parking stall becomes available. BP will monitor the site and notify operators to remove items, including tires, if BP observes items being sold outside. BP will ask that they be placed inside the building. A BP site maintenance advisor visits the site at least once a month. If the site is not being managed per the BSA resolution, the BP site maintenance advisor will give the operator a chance to correct and will inform the operator that they are out of compliance. BP will correct the noncompliances as necessary and bill the operator if the operator does not work to come into compliance. The station has six existing parking stalls (five standard stalls and one handicap stall) for customer use in addition to the two stalls used for the stations.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans 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 11, 1955, as amended through April 26, 2016, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on September 20, 2031, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Board Approved: August 8, 2022 – Six (6) sheets’; and *on further condition*;

THAT the term of the grant shall be for ten years, to expire on September 20, 2031;

THAT the lot shall be kept free of debris and graffiti;

THAT all signage at the Premises shall comply with C2 zoning district regulations;

THAT parking on the site shall be limited to vehicles awaiting service;

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

THAT all light fixtures shall be NYC-approved;

THAT all lighting sources located adjacent to residential uses shall be shielded from direct view and minimize any adverse effects on surrounding residences;

THAT improvements to the site shall be in compliance with the BSA-approved plans;

THAT the drain at the site shall be maintained to assure that no runoff goes from the station to the outside of the station;

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. 227-10-BZ’), shall be obtained within 12 months, by September 19, 2023;

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

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

THAT the Department of Buildings must 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 8, 2022.

663-63-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Dorp Baptiste Church, Inc., owner.

SUBJECT – Application July 26, 2019 – Amendment of previously approved Special Permits (§§ 73-452 & 73-641). The amendment seeks the proposed enlargement of an existing house of worship (UG 4) (New Dorp Baptist Church) and school (UG 3) (New Dorp Baptist Academy). R3X zoning district.

PREMISES AFFECTED – 46 10th Street, Block 4220, Lot 0029, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for adjourned hearing.

584-82-BZ

APPLICANT – Sheldon Lobel, P.C., for 64th Street Third Avenue Associates, LLC, owner.

SUBJECT – Application August 15, 2020 – Amendment of a previously approved Variance (§72-21) permitting the construction of a required plaza at a height in excess of 5 feet above the curb level. The seeks modifications to the layout of a Privately Owned Public Space (“POPS”). R8B and C1-9 zoning districts.

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PREMISES AFFECTED – 200 East 64th Street, Block 1418, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for adjourned hearing.

182-85-BZ

APPLICANT – Eric Palatnik, P.C., for 209-11 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the enlargement of a contractor’s establishment (UG 16) which expired on August 22, 2021. R6B zoning district.

PREMISES AFFECTED – 209-11 20th Street, Block 637, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for adjourned hearing.

183-85-BZ

APPLICANT – Eric Palatnik, P.C., for 206 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom which expired on September 19, 2021. R6B zoning district.

PREMISES AFFECTED – 206/8 20th Street, Block 640, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for adjourned hearing.

66-90-BZV

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corp., owner.

SUBJECT – Application May 3, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 1, 2020; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for adjourned hearing.

214-06-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application April 2, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expires on April 10, 2022; Amendment to permit the conversion of automotive repair bays to accessory convenience store. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, Block 10509, Lot 0265, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

MINUTES

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe La Sorsa, owner.

SUBJECT – Application October 4, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2022. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415/17 East 92nd Street, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2016-4176-BZ

APPLICANT – Akerman LLP, for Islamic Center of Jackson Heights, owner.

SUBJECT – Application November 18, 2021 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR §24-34 (front yard) and ZR §24-35 (side yard) requirements, which expired on October 3, 2021. R4 zoning district.

PREMISES AFFECTED – 78-04 31st Avenue, Block 1149, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2021-24-A

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

SUBJECT – Application April 9, 2021 – Proposed development of a one-story warehouse building (UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

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

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative.....0
Abstain: Commissioner Yoon.....1

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated March 11, 2021, acting on Alteration Type 1 Application No. 520313385 reads in pertinent part: “Proposed building which does not front on a legally mapped street is contrary to Article III, Section 36 of the General City Law, therefore obtain Board of Standards and Appeals approval.”

This is an application under General City Law (“GCL”) § 36 to permit, in an M3-1 zoning district and the Special South Richmond District, the proposed development of a one-story warehouse building (Use Group (“UG”) 16), not fronting on a legally mapped street.

A public hearing was held on this application on June 6, 2022, after due notice by publication in *The City Record*, and then to decision on August 8, 2022. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the east side of Johnson Street, between Shamrock Avenue and Industrial Loop, within an M3-1 zoning district and the Special South Richmond District, in Staten Island. With approximately 165 feet of frontage along Johnson Street, 151 feet of depth, and 25,049 square feet of lot area, the Premises are currently vacant.

II.

GCL § 36 (2) states, in part:

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

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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.

III.

The applicant proposes to develop the Premises with a one-story warehouse (UG 16) to be divided into six separate units, each approximately 2,200 square feet. The applicant states that the proposed building would have 13,220 square feet of floor area (0.52 FAR). The applicant further declares that on the western portion of the lot, nine accessory parking spaces would be provided. The applicant represents that pursuant to Z.R. § 44-21, seven accessory parking spaces are required, but Z.R. § 44-23 waives required spaces fewer than 15 within an M3-1 zoning district. Moreover, the applicant proposes to construct one loading berth, as per Z.R. § 44-52. Finally, the applicant states that the proposed building complies and conforms to all requirements of the underlying M3-1 zoning district and all the requirements of the Special South Richmond District.

Pursuant to the GCL § 36 requirements, the applicant represents that the subject lot is only accessible from Johnson Street, meaning that the requirement that the Premises be accessible from a street duly placed on the official City map results in practical difficulty and unnecessary hardship in development of the subject lot as alternate access is impossible. The applicant further states that development of the lot does not require the proposed structure to be related to any existing mapped streets or highways since Johnson Street is currently paved and improved, providing access from Arthur Kill Road to several existing buildings in the vicinity of the subject site.

IV.

By letter dated August 7, 2021, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application materials and has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

By letter dated June 13, 2022, the New York City Department of Environmental (“DEP”) states that based on DEP maps, there are no sewers in Johnson Street to the north of Arthur Kill Road. No existing water mains or sewers are crossing the privately owned referenced lot. The proposed sanitary and storm will be discharged as per the Site Connection Proposal (“SCP”) # 17588. It is anticipated that the water connection, connected to the water main in Johnson Street, will be maintained by the City of New York. Based on the above, the NYC DEP has no objections to the proposed GCL § 36 application.

The applicant proposes to install an on-site sewage disposal system to serve a warehouse in the M3-1 zoning district. By correspondence dated December 31, 2020, on a Construction Code Determination Form (“CCD1”), the NYC DOB states that there are no sanitary sewers within 2,000 feet of the site. A septic system cannot be installed

because of poor soil conditions, the septic test holes failed. The applicant is proposing a holding tank for the sanitary waste. The applicant calculated the building would generate 252 gallons of wastewater per week and is proposing a 2,000-gallon holding tank. The tank will have an audio and visual alarm that will be activated by a float switch when the volume reaches 1,500 gallons. A commercial hauler will be contracted to pump out the tank every eight weeks or when the high-water alarm is triggered.

The request is approved with the following conditions:

1. A note shall be placed on the certificate of occupancy indicating sanitary sewage disposal is being stored in a holding tank that will be pumped out on a regular basis.
2. Record a deed restriction stating, something to the effect that, the owner must maintain the holding tank system by retaining a septic system contractor to pump the tank on a regular basis.
3. Approval from DEP is required.
4. If the City installs a sanitary sewer in front of this property, the owner must connect to the sewer and remove the holding tank within the time schedule provided by DEP.
5. If the building bulk increases or the occupancy changes, plans shall be submitted to modify the tank.
6. An audio and visual alarm shall be located at each toilet and sink location in the building. A sign shall be placed below the audio and visual alarm explaining to the building occupants how to remedy situation. A common bathroom with multiple toilets and sink may have one alarm.
7. This holding tank cannot treat waste. If the treatment is desired a NYS Department of Health approval is required.

At hearing, the Board requested that the applicant respond to DEP concerns about the applicant’s proposed plans including the certified Site Connection Proposal. In response, the applicant submitted a Builder’s Pavement Plan (“BPP”) demonstrating the proposed method of connection as well as a certified Site Connection Proposal illustrating the proposed method of disposing the internal sanitary and storm water.

Accordingly, 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 March 11, 2021, acting on Alteration Type 1 No. 520313385, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the development 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 “Board Approved: August 8, 2022”-

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One (1) sheet; and *on further condition*:

THAT a note shall be placed on the certificate of occupancy indicating sanitary sewage disposal is being stored in a holding tank that will be pumped out on a regular basis;

THAT the owner shall record a deed restriction stating, something to the effect that, the owner must maintain the holding tank system by retaining a septic system contractor to pump the tank on a regular basis;

THAT the deed restriction shall be recorded prior to the issuance of the Temporary Certificate of Occupancy (“TCO”);

THAT approval from NYC DEP is required;

THAT if the City installs a sanitary sewer in front of this property, the owner must connect to the sewer and remove the holding tank within the time schedule provided by DEP;

THAT if the building bulk increases or the occupancy changes, plans shall be submitted to modify the tank;

THAT an audio and visual alarm explaining to the building occupants how to remedy situation (a common bathroom with multiple toilets and sink may have one alarm);

THAT this holding tank cannot treat waste and if treatment is desired, a NYS Department of Health approval is required;

THAT the building will be fully sprinklered;

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. 2021-24-A”), shall be obtained within four years, by August 8, 2026;

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 8, 2022.

2020-58-A and 2020-59-A

APPLICANT – Eric Palatnik, P.C., for Kenneth Chapman, owner.

SUBJECT – Application July 17, 2020 – Proposed construction of a single-family home on a property not fronting on a mapped street contrary to General City Law (“GCL”) 36. R1-2 zoning district.

PREMISES AFFECTED – 10, 12 Jasmine Way, Block 695, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for continued hearing.

2021-79-A

APPLICANT – Sheldon Lobel, P.C., for 38-60 Hotel, LLC, owner.

SUBJECT – Application November 22, 2021 – Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-3 zoning district.

PREMISES AFFECTED – 38-60 11th Street, Block 474, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

2021-81-BZY

APPLICANT – Sheldon Lobel, P.C., for 38-60 Hotel, LLC, owner.

SUBJECT – Application November 22, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-60 11th Street, Block 474, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

2022-1-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for JLAM Management LLC, owner.

SUBJECT – Application August 8, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district

PREMISES AFFECTED – 1227 Broadway, Block 831, Lot 68, Borough of Manhattan.

COMMUNITY BOARD #5M

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THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2018-26-BZ

CEQR #18-BSA-100Q

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

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings, dated January 29, 2018, acting on Alteration Type 1 Application No. 421485832 reads in pertinent part:

Objection #1

The term of Cal No. 164-99-BZ has expired.
Verify compliance with BSA Cal. No. 164-99-BZ Board of Standards and Appeals.
Verify timeframe and stipulations.

Objection #2

Eating and drinking establishment with no limitation on entertainment or dancing (Use Group 12) is not permitted as of right in a C2-3/R6 zoning district and is contrary to zoning regulations section 32-21 ZR. Respectfully request application is referred to Board of Standards and Appeals for a special permit pursuant to section 73-244 ZR for eating and drinking establishment with entertainment without restrictions and dancing (UG 12).

I.

This is an application, pursuant to Z.R. §§ 73-03 and 73-244, to permit an eating and drinking establishment without restrictions and limitation on entertainment and dancing (Use Group (“UG”) 12A), contrary to Z.R. § 32-21.

A public hearing was held on this application on January 11, 2021, after due notice by publication in *The City*

Record, with continued hearings on March 29, 2022 and July 19, 2022, and then to decision on August 8, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood. The Board received two form letters of support and two letters of objection citing concerns over congestion, noise, traffic, and pollution.

The Premises are located on the north side of Roosevelt Avenue, between 79th Street and 80th Street, in a C2-3 (R6) zoning district, in Queens. With approximately 20 feet of frontage along Roosevelt Avenue, 100 feet of depth, and 1,950 square feet of lot area, the Premises are currently occupied by a two-story, with cellar, commercial building.

II.

The Board has exercised jurisdiction over the Premises since June 6, 1989, when, under BSA Cal. No. 873-87-BZ, the Board granted a special permit, pursuant to Z.R. § 73-241, to permit, in a C2-3 (R6) zoning district, the change in use from an eating and drinking establishment without restrictions on entertainment and dancing (Use Group 12) on both floors of a two-story commercial building, on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the special permit be limited to a term of five years, to expire on June 6, 1994; garbage be stored inside the Premises and be collected five days per week; a minimum of 21 off-site valet parking spaces be provided to 4:00 a.m. each night that the eating and drinking establishment with entertainment and dancing is in operation; an employee of the establishment be stationed at the front entrance during all hours of operation to ensure that patrons arrive and depart in an orderly manner; the number of occupants and the arrangement of tables aisle spaces and exits comply with the laws governing a place of assembly with occupancy of 75 or more persons; these 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, until July 7, 1989; 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 constructions be completed in accordance with Z.R. § 73-70.

On August 15, 2000, under BSA Cal. No. 164-99-BZ, the Board granted a special permit, pursuant to Z.R. § 73-244, in a C2-3 (R6) zoning district, to permit, on a site previously before the Board, the continuation of an entertainment and dancing establishment (Use Group 12), on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the special permit be limited to a term of three years from the date of the grant, to expire on August 15, 2003; the above conditions appear on the certificate of occupancy; the development, as approved, is the 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

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jurisdiction of the Department; and substantial compliance be completed in accordance with Z.R. § 73-70.

On August 9, 2005, under BSA Cal. No. 164-99-BZ, the Board waived its Rules of Practice and Procedures and further amended the resolution to permit the extension of the term of the resolution for three years from August 15, 2003 expiring August 15, 2006, on condition that this use substantially conform to drawings for the ground floor and cellar of the building filed with the application; the hours of operation be limited to 8 p.m. until 4 a.m.; there be no tables or chairs and no eating or drinking on the second floor; the above conditions be listed on the certificate of occupancy; all conditions from prior resolutions(s) not specifically waived by the Board remain in effect and be listed on the certificate of occupancy if listed previously; the interior layout and all exiting requirements be reviewed and approved by the Department of Buildings; 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, Administrative Code and the any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

On September 9, 2008, under BSA Cal. No. 164-99-BZ, the Board further amended the resolution to permit the noted amendment to the plans and to extend the term of the special permit for an eating and drinking establishment with entertainment and dancing for three years, from August 15, 2006 to August 15, 2009, on conditions that the use substantially conform to drawings as filed with the application; the term of the grant be for three years from the last expiration date, to expire on August 15, 2009; 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; a new certificate of occupancy be obtained within six months of the grant, by March 9, 2009; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction(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.

III.

Z.R. § 73-244 states, in part:

[T]he Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the [six] findings are made.

A.

First, the applicant submits that a minimum of four square feet of waiting area within the zoning lot will be provided for each person permitted under the occupant capacity as determined by the New York City Building

Code, and the required waiting area will be in an enclosed lobby and not include space occupied by stairs, corridors, or restrooms. The applicant represents that a waiting area of 724 square feet would be provided on the second floor in excess of the requirement since a minimum of 664 square feet of waiting area for 166 occupants is required. The applicant further states that there is a direct connection between the first and second floors which functions to facilitate less crowding in front of the establishment and the sidewalk. Accordingly, the Board finds that proposed waiting area will be sufficient for proposed occupant load at the Premises.

B.

Next, the applicant states that the entrance to the Premises is a minimum of 100 feet from the nearest residence district boundary. Specifically, the applicant states that the entrance is located approximately 122 feet from the closest residence district boundary at the rear of the subject Premises. In support of this contention, the applicant submitted a zoning map and a tax map illustrating this fact. Accordingly, the Board finds that the Premises are a minimum of 100 feet from the nearest residence district boundary.

C.

The applicant represents that the proposed use will not cause undue vehicular or pedestrian congestion in local streets. Pursuant to Z.R. § 36-21, based on an occupancy load of 166 occupants, 14 parking spaces are required since the rated capacity is 12. As per Z.R. § 36-231, for C2-3 districts, if the total number of accessory off-street parking spaces required on the zoning lot is less than 25, parking is waived, therefore, the applicant maintains that no parking is required. The applicant represents that the hours of operation for the establishment are from 4:00 p.m. to 4:00 a.m., seven days per week, and states that during the hours of operation heavy vehicular traffic is at a minimum because there is on-street parking and public parking within the vicinity of the site, as well as a second floor waiting area. The applicant declares that the proposed use does not cause any undue vehicular or pedestrian congestion in local streets or at the first-floor level. Furthermore, the applicant states that the majority of commercial establishments in the vicinity are closed during its hours of operation.

The applicant maintains that there are adequate public transportation facilities serving the area plus there is adequate on-street and off-street parking available. Specifically, the applicant states that 1) there is a public garage with a capacity of 576 cars adjacent to the Elmhurst Hospital Center and during the hours of operation of the lounge there are spaces available; 2) there is a parking lot on block 1288, lot 39 on the corner of Roosevelt Avenue and 78th Street, approximately one block away from the subject site should additional parking be required; and 3) the establishment provides 21 off-street valet parking spaces at the parking garage located at 79-11 41st Avenue until 4:00 a.m. each night that the eating and drinking establishment is in operation. Finally, the applicant commits to having an employee stationed at the front entrance during all hours of

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operation to ensure that when patrons arrive, they are directed to the first or second floor and also to assure that crowds are not gathering outside on the sidewalk or street. Accordingly, the Board finds that the proposed use will not cause undue vehicular or pedestrian congestion in local streets.

D.

Moreover, the applicant submits that the proposed use will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods. Specifically, the applicant posits that the subject establishment has been in operation at this location for 34 years and, therefore, is a part of the neighborhood character. In support of this contention, the applicant submitted a land use map which demonstrates that are numerous eating and drinking establishments with entertainment and dancing (UG 12) and retail stores along Roosevelt Avenue within the immediate area. Furthermore, the map illustrates that the neighborhood consists of two to three-story commercial and mixed-use buildings along Roosevelt Avenue and a mix of two to three-family dwellings, multiple dwellings, mixed-use and community facilities along the surrounding streets.

Specifically, the applicant describes how the block front of the subject block consists of six commercial buildings and four mixed-use buildings of two to three stories with ground floor commercial uses which is consistent with the other uses along Roosevelt Avenue. Furthermore, immediately to the east of the subject site all uses are commercial within two to three story buildings including travel agents, income tax and offices. Accordingly, the Board finds that the proposed use will not impair the character or the future use or development of the surrounding residential or mixed used neighborhood.

E.

The applicant represents that the proposed use that such use would not cause the sound level in any affected conforming residential use, joint living-work quarters for artists, or loft dwelling to exceed the limits set forth in any applicable provision of the New York City Noise Control Code. Specifically, the applicant describes the double doors installed at the back entrance; double insulation on the roof and around the Premises; and the six-inch-thick insulation between the existing decorative paneling and inner brick walls. Furthermore, the applicant states the outer walls of the Premises are constructed of masonry and brick with a thickness of 12 inches. Additionally, the applicant describes that the inside of the walls are covered with fire-proof sheetrock mounted on 2x4 studs filled with insulation batts. In support to this contention that the proposed noise attenuation measures would not affect the sound level in the surrounding area, the applicant submitted a noise analysis addressing any potential noise impacts from the proposed use on nearby residents and noise attenuation measures with relevant noise studies including backup data as part of the Environmental Assessment Statement ("EAS"). Accordingly, the Board finds that the proposed use will not cause the sound level in any affected conforming residential

use, joint living-work quarters for artists, or loft dwelling to exceed the limits set forth in any applicable provision of the New York City Noise Control Code.

F.

The applicant declares that the owner of the building and the operator is the same individual who obtained the original grant from the Board in 1989 and is the same individual requesting the subject special permit. Accordingly, the Board finds that the application is made jointly by the owner of the building and the operators of the eating and drinking establishment.

IV.

Over the course of hearings, the Board raised concerns regarding the current and proposed conditions at the site, including noise attenuation, crowd control, and trash pickup.

In response, the applicant submitted photographs of the interior of the Premises, demonstrating the proposed waiting area; updated plans with the ADA accessible waiting area details on the existing party wall section; and an operational plan committing to the following:

The current uses on the site and specifically the function on each floor are:

Cellar: Office, restrooms, boiler room. Utility room.

First: Eating and drinking establishment use group 12 with dancing and live music for 166 occupants in accordance with Place of Assembly Certificate of Operation No.402575815 and Certificate of Occupancy No.401619192F. The maximum occupancy load for the first floor eating and drinking establishment is 166 occupants. An ADA compliant accessible waiting area at the front of the premises on the first floor is proposed. This proposed change will accommodate patrons which are wheelchair bound. This will result in the elimination of one table which seats 4 reducing the number of occupants in this area from 60 to 56 and the total number of occupants for the first floor from 166 to 162. Second: Waiting area and restrooms (Not a cabaret) 724 square feet for a maximum of 120 occupants in accordance with Place of Assembly Certificate of Operation No. 402575824 and Certificate of Occupancy No.401619192F. The second floor is utilized strictly as a waiting area, no cabaret, no dancing, and no activities are permitted. Patrons waiting to be seated and access to the first floor eating and drinking establishment utilize the second floor so as to eliminate the gathering of crowds on the sidewalk outside the establishment. No food or drinks are permitted on the second floor. The 2005 special permit approval was granted on condition that no tables and seating for service be included in the waiting area. Place of Assembly Certificate of Operation No. 40257815 for first floor indicating 166 occupants and Place of Assembly Certificate of Operation No. 40257824 for second floor indicating 120

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occupants are submitted herewith. New public assembly permits will be issued when a new certificate of Occupancy is obtained. A new Certificate of Occupancy will be issued by the Department of Buildings once a special permit is obtained from the Board of Standards and Appeals.

The current and proposed hours of operation are 4:00 p.m. to 4:00 a.m.

Crowd management:

Security personnel is provided at the site through a security company. Security personnel is stationed at the front entrance to ensure that crowds are not gathered in front of the establishment and patrons are entering in an orderly manner. In the event that the first floor is full to maximum capacity of 166 occupants the security personnel will advise the manager. The manager will immediately notify one of the waiters available to escort the patron(s) to the second floor waiting area, where their names are placed on a waiting list in order to wait for a seat and/or a table when is available on the first floor. Once spots are available on the first floor the manager will notify one of the waiters available to escort the next patron(s) on the waiting list from the second floor waiting area to the first floor.

Refuse management:

Refuse is collected by Avid Waste Systems four times per week.

Regular trash is collected by Avid Waste Systems on Monday, Thursday, and Saturday. Trash is always stored inside the establishment until pick up times which are during the evening. Recyclables (glass, aluminum, metal plastic and paper) which are separated from the other refuse are collected on Wednesday and Saturday as single stream. Single stream refers to these recyclables which are not sorted from each other but picked up together. In other words, glass bottles are not separated from plastic or metal containers when picked up from the establishment, but they are sorted at the recycling facility after they are picked up from the site.

V.

By letter dated December 28, 2020, the Fire Department states that these Premises are protected by a fire suppression system (sprinkler) that has been tested and FDNY permits are current. In addition, the Bureau's Licensed Public Place of Assembly ("LPPA") unit has also inspected these Premises have found same to be in compliance with applicable rules and regulations of the Fire Department. Based on the foregoing, the Fire 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.

VI.

The Board has conducted an environmental review of

the proposed action, which is classified a Type I action pursuant to 6 NYCRR, Part 617.4, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA100Q, dated August 8, 2022.

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 April 29, 2021, that there are no archaeological concerns and that the property is within the S/NR listed Jackson Heights Historic District. Should any actions take place involving Federal or State discretionary permitting or funding, consultation with the NYS State Historic Preservation Office ("SHPO") is required.

By letter dated July 7, 2022, the New York City Department of Environmental Protection states the proposed project will not exceed 45 dB in any one-third octave band at the nearby residential receptors and will comply with Section 24-231 of the Noise Code.

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.

VII.

Based upon its review of the record, the Board has determined the special permit appropriate with certain conditions as set forth below.

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 *amends* the resolution, dated June 6, 1989, as amended through September 9, 2008 so that as amended this portion of the resolution shall read: "to permit the legalization of an eating and drinking establishment without restrictions on entertainment and dancing (UG 12) for a term of three years, to expire on August 8, 2025; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Board Approved: August 8, 2022 – Six (6) sheets'; and *on further condition*:

THAT the term of the variance will be for three years, to expire on August 8, 2025;

THAT the second floor shall only be used as a waiting area;

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. 2018-26-BZ'), shall be obtained within one year, by August 8, 2023;

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

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

THAT the Department of Buildings must 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 8, 2022.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – Variance (§72-21) to permit the development of a 17-story, mixed-use, community facility and residential building on a waterfront lot contrary to ZR §62-322 (Floor Area and Floor Area Ratio ("FAR")); ZR §62-341 (Maximum Base Height and Building Height); ZR §62-341(a)(2) (Setbacks) and ZR §25-23 & 25-31 (parking). R6 zoning district.

PREMISES AFFECTED – 128 Beach 9th Street, Block 15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

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 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for decision, hearing closed.

2020-71-BZ

APPLICANT – Eric Palatnik, P.C., for Strong River Properties LLC, owner.

SUBJECT – Application September 11, 2020 – 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.

PREMISES AFFECTED – 166 Coffey Street, Block 585, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – 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.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for adjourned hearing.

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.
SUBJECT – Application February 24, 2021 – Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district.
PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.
COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for adjourned hearing.

2021-30-BZ

APPLICANT – Sheldon Lobel, P.C., for Mesorah Publications, LTD, owner; Brooklyn Rise Charter School, lessee.
SUBJECT – Application May 5, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Brooklyn Rise Charter School) contrary to ZR §42-10 (use), ZR §43-26 (rear yard), ZR §43-43 (street wall height, setback and sky exposure plane). M1-2 Zoning District.
PREMISES AFFECTED – 222 44th Street, Block 736, Lot(s) 13, Borough of Brooklyn.
COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for adjourned hearing.

2021-40-BZ

APPLICANT – Terminus Group, LLC, for 157 West 24th Street Lodging LLC, owner.
SUBJECT – Application June 18, 2021 – Variance (§72-21) to permit the development of a fifteen (15) story mixed-use building contrary to ZR §42-00. M1-6 zoning district.
PREMISES AFFECTED – 157 W 24th Street, Block 800, Lot 9, Borough of Manhattan.
COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for continued hearing.

2021-64-BZ

APPLICANT – Law Office of Lyra J. Altman, for Ouni Mamrout, owner.
SUBJECT – Application October 12, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 zoning district.

PREMISES AFFECTED – 205-207 Gravesend Neck Road, Block 7154, Lot(s) 3 & 4, Borough of Brooklyn.
COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2021-67-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniel Husney, owner.
SUBJECT – Application October 22, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 (Special Ocean Parkway) zoning district.
PREMISES AFFECTED – 2307 Ocean Parkway, Block 7183, Lot 31, Borough of Brooklyn.
COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –
Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta and Commissioner Yoon.....5
Negative.....0

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

2022-10-BZ

APPLICANT – Sherry and O’Neill, for RFR/K 55 Prospect Owner LLC, owner; Vivvi, Inc., lessee.
SUBJECT – Application February 4, 2022 – Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (Vivvi) contrary to ZR §42-10. M1-6 zoning district.
PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

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PUBLIC HEARINGS
MONDAY-TUESDAY, AUGUST 8-9, 2022
2:00 P.M.

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

ZONING CALENDAR

2021-55-BZ

APPLICANT – Eric Palatnik, P.C., for H & Z Building Corp., owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district.

PREMISES AFFECTED – 134-16 35th Avenue, Block 4958, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 12-13, 2022, at 10 A.M., for continued hearing.

2021-61-BZ

APPLICANT – Eric Palatnik, P.C., for Eduard Magidov, owner.

SUBJECT – Application September 16, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R3-1 zoning district.

PREMISES AFFECTED – 4080 Ocean Avenue, Block 8731, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for continued hearing.

2021-69-BZ

APPLICANT – Eric Palatnik, P.C., for IVY CIP LAND HOLDINGS, LLC, owner.

SUBJECT – Application October 29, 2021 – Special Permit (§73-243) to permit an accessory drive-through accessory to an Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-15. C1-3/R2 zoning district.

PREMISES AFFECTED – 240-10 Merrick Boulevard, Block 13204, Lot 97, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2021-70-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Rakhshan Lalehfar, owner.

SUBJECT – Application November 10, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family residence contrary to underlying bulk requirements. R2 zoning district.

PREMISES AFFECTED – 1206 East 21st Street, Block 7602, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

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DOCKETS

New Case Filed Up to September 12-13, 2022

2022-58-BZ

4420 15th Avenue, Block 5612, Lot(s) 0040, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the addition of a fifth and partial sixth floor dormitory on an existing four-story school (UG 3) contrary to ZR §24-522 (height and setback) C1-3/R6 zoning district. R6/C1-3 district.

2022-59-BZ

591 East Fordham Road, Block 3273, Lot(s) 0261, Borough of **Bronx, Community Board: 6**. Re-Instatement (§11-41) of a previously approved variance permitting the operation of an Automotive Repair Facility which expired on November 18, 2007, Waiver of the Board's Rules of Practice and Procedures. C4-5D and R6B zoning district. C4-5D and R6B district.

2022-60-A

35 Herkimer Place, Block 1865, Lot(s) 0072, Borough of **Brooklyn, 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. M1-1 zoning district. M1-1 district.

2022-61-BZ

1002 Avenue N, Block 6592, Lot(s) 0001, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the development of a house of worship (UG 4) contrary to ZR §§ 113-51 (Floor Area/FAR), 23-461 (Side Yard), 113-55 (Wall Height/Building Height), and 113-561 (Parking). R5 zoning district, in the Subdistrict of the Special Oce R5, OP district.

2022-62-A

34 West 38th Street, Block 00839, Lot(s) 0067, 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 zoning district. M1-6 district.

2022-63-BZ

2225 East 14th Street, Block 7375, Lot(s) 0061, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R4 zoning district. R4 district.

2022-64-BZ

2021 East 5th Street, Block 7108, Lot(s) 0114, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R2X Special Ocean Parkway District. R2X district.

2022-65-BZ

2503-2519 Coney Island Avenue, Block 7371, Lot(s) 0083, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-19) to permit the construction of school (UG 3) contrary to ZR §32-31 (Use). C8-1 & R4 zoning district. C8-1 and R4 district.

2022-66-BZ

405 Arthur Kill Road, Block 5550, Lot(s) 0017, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-14) to permit the development of a Battery Energy Storage System (BESS) (UG 6D) contrary to ZR §22-10. R3-2 zoning district. ZR-22-10 district.

2022-67-BZ

1634 Richmond Avenue, Block 2236, Lot(s) 0079, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-14) to permit the development of a Battery Energy Storage System (BESS) (UG 6D) contrary to ZR §22-10. C1-2/R3-X & R3-X zoning district. R3X/C1-2 district.

2022-68-A

1475 Broadway, Block 00995, Lot(s) 0001, Borough of **Manhattan, Community Board: 5**. Interpretive Appeal concerning a final determination of the New York City Department of Buildings. C6-7 zoning district. C6-7 district.

2022-69-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C7 district.

DOCKETS

2022-70-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C7 district.

2022-71-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C7 district.

2022-72-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C7 district.

2022-73-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C7 district.

2022-74-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C-7 district.

2022-75-A

2001 Bartow Avenue, Block 5141, Lot(s) 101, Borough of **Bronx, Community Board: 10**. Appeal of a NYC Department of Buildings' determination to revoke permits for an Advertising Sign. C7 zoning district. C7 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, OCTOBER 17-18, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, October 17th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday October 18th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

245-32-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Raso, owner.

SUBJECT – Application December 23, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive repair facility (UG 16B) which expired on July 9, 2022; Amendment to permit an increase of parking and change in hours of operation. R6B/C2-3 zoning district.

PREMISES AFFECTED – 123-05 101st Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

615-57-BZ

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

SUBJECT – Application March 11, 2022 – 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 8, 2023. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

346-60-BZ

APPLICANT – Glen V. Cutrona, AIA, for Tuma Basaranlar, owner.

SUBJECT – Application April 28, 2021 – 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 permit the conversion of automotive repair bays to an accessory convenience store and incidental alterations to the site. C2-3/R6 zoning district.

PREMISES AFFECTED – 211 Tapscott Street, Block 3565, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #3BK

112-11-BZ

APPLICANT – Belkin Burden Goldman, LLP, for Tom Petrosino, owner.

SUBJECT – Application February 17, 2022 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of a scrap metal yard (UG 18) which expires on June 5, 2022. C8-1 zoning district.

PREMISES AFFECTED – 2994 Cropsy Avenue, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application February 24, 2021 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a mixed residential and community facility (Congregation Divrei Yoel). The amendment seeks to permit changing the dimensions of the zoning lot, and by making minor changes to the interior layout of the cellar and lower three floors. R7A zoning district.

PREMISES AFFECTED – 77-79 Gerry Street, Block 2266, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEALS CALENDAR

2022-4-BZY

APPLICANT – Sheldon Lobel, P.C., for President Sai, LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-4/R6B zoning district.

PREMISES AFFECTED – 529 President Street, Block 441, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2022-7-BZY

APPLICANT – Eric Palatnik, P.C., for St. Johns Real Estate Consultant, Inc., owner.

SUBJECT – Application January 19, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-75 11th Street, Block 473, Lot 553, Borough of Queens.

COMMUNITY BOARD #1Q

CALENDAR

ZONING CALENDAR

2021-14-BZ

APPLICANT – Rampulla Associates Architects, for Venetian Circle LLC, owner; Starbucks Corporation, lessee.
SUBJECT – Application February 10, 2021 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 2010 Victory Boulevard, Block 723, Lot 4, Borough of Staten Island.

COMMUNITY BOARD #1SI

2021-38-BZ

APPLICANT – Eric Palatnik, P.C., for 709 Shepherd Avenue Corp., owner.

SUBJECT – Application June 7, 2021 – Variance (§72-21) to permit the development of a residential building contrary to ZR §23-48 (side yards for existing narrow lots) and ZR §25-23 (required parking). R5 zoning district.

PREMISES AFFECTED – 707 Shepherd Avenue, Block 4453, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #5BK

2021-87-BZ

APPLICANT – Eric Palatnik, P.C., for ZL Macedonia, LLC, owner.

SUBJECT – Application December 27, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-20. C4-3 zoning district.

PREMISES AFFECTED – 37-16 Union Street, Block 4978, Lot 46, Borough of Queens.

COMMUNITY BOARD #7Q

Shampa Chanda, Acting Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY, SEPTEMBER 12-13, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

214-06-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application April 2, 2021 – Extension of Term (§ 11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expires on April 10, 2022; Amendment to permit the conversion of automotive repair bays to accessory convenience store. R3-2 zoning district.

PREMISES AFFECTED – 196-25 Hillside Avenue, Block 10509, Lot 0265, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application for an extension of term, pursuant to Z.R. § 11-411, for a variance, previously granted by the Board, which permitted the operation of a Use Group (“UG”) 16B automotive repair shop and expired on April 10, 2022.

A public hearing was held on this application on April 26, 2021, after due notice by publication in *The City Record*, with a continued hearing on August 8, 2022, and then to decision on September 12, 2022. Vice-Chair Chanda performed inspections of the site and surrounding neighborhood. Community Board 8, Queens, recommends approval of this application.

The Premises are located on the northwest corner of Hillside Avenue and 197th Street, within an R3-2 zoning district, in Queens. With approximately 180 feet of frontage along Hillside Avenue, 64 feet of frontage along 197th Street, and 16,672 square feet of lot area, the Premises are occupied by a one-story, automotive service station.

The Board has exercised jurisdiction over the Premises since February 23, 1955, when, under BSA Cal. No. 673-53-BZ, the Board granted a variance for a term of 15 years to expire on February 23, 1970, to permit, as to the gasoline portion, the Premises be constructed substantially as proposed and as indicated on plans filed with the application on condition that on the rear portion of the Premises, there be erected, as proposed and as shown on such plans, a

single-family dwelling facing Foothill Avenue, and occupying the space as proposed and as shown on BSA-approved plans; such dwelling and the proposed gasoline station be constructed simultaneously and the gasoline station not be occupied until the residential building is constructed and a certificate of occupancy issued therefore; the portion proposed for the service station be levelled substantially to the grade of Hillside Avenue; a retaining wall be constructed of sufficient height from east to west as shown; on such a retaining wall there be erected a masonry wall not less than two feet in height and a steel picket fence above to a total height of not less than 5'-6" above the grade at the rear; along the westerly lot line there be erected a masonry wall with retaining wall as may be required, with a similar fence to a total height of 5'-6"; a similar fence to be erected along 197th Street; curb cuts be restricted to three curb cuts to Hillside Avenue, each 30 feet in width, located where shown; no curb cut be nearer than five feet to a lot line as prolonged; there be no curb cut to 197th Street to a the radial corner; pumps be of low approved type erected not nearer than 15 feet to the street building line; gasoline storage tanks not exceed 12 550-gallon approved tanks; the accessory building have no cellar below and be of a design and arrangement as indicated on BSA-approved plans; the accessory building be faced with face brick; portable fire fighting appliances be maintained as the Fire Commissioner direct; there may be for a similar term parking and storage of motor vehicles on the gasoline station portion of the area where shown, and so parked as not to interfere with the servicing of the station; sidewalks and curbing abutting the entire Premises on Hillside Avenue, 197th Street, and Foothill Avenue be constructed or repaired to the satisfaction of the Borough President; the residential building be of design and arrangement as indicated on such plans; the two buildings proposed may be erected on one lot but such lot may be divided into two lots with lot numbers assigned thereto; all permits be obtained, including a certificate of occupancy, and work completed within the requirements of the Zoning Resolution.

On November 29, 1955, under BSA Cal. No. 673-53-BZ, the Board amended the resolution to permit the erection of a steel picket fence on the retaining wall above to a total height of not less than 5'-6" above grade at the rear, on condition that in all other respects the requirements of the resolution be complied with.

On February 21, 1956, under BSA Cal. No. 673-53-BZ, the Board further amended the resolution to permit the dwelling to be changed in size as proposed and indicated on the revised plans filed with the request for amendment on condition that in all other respects the resolution be complied with.

On April 14, 1970, under the BSA Cal. No. 673-53-BZ, the Board further amended the resolution to extend the term of the variance for ten years, from February 23, 1970 to February 23, 1980, on condition that a copy of the original resolution, as amended, and a certified copy of the drawings as approved by the Board be permanently posted in the office of this gasoline service station; other than as

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amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On February 2, 1988, under the BSA Cal. No. 673-53-BZ, the Board further amended the resolution to permit, in conjunction with a change of self-service pumps for the sale of gasoline in accordance with the conditions of the resolution granted under BSA Cal. No. 683-87-A, the erection of a new 30'-4" x 53'-8" steel canopy over two new gasoline pump islands with new self-serve "MPD" pumps; to alter the existing office and sales area of the accessory building to accommodate an attendant's booth and to relocate the center curb cut on Hillside Avenue, on condition that the Premises conform to revised drawings of proposed conditions; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one year, by February 2, 1989; and other than as amended, the resolution be complied with in all respects.

On June 4, 1991, under BSA Cal. No. 673-53-BZ, the Board further amended the resolution to extend the term of the variance for ten years, from April 22, 1990 to April 22, 2000, 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 above cited be complied with in all respects; a new certificate of occupancy be obtained within one year, by June 4, 1992.

On December 8, 1992, under BSA Cal. No. 673-53-BZ, the Board further amended the resolution to extend the time to obtain a certificate of occupancy on condition that a new certificate of occupancy be obtained within 18 months from June 4, 1992, by December 4, 1993.

On May 23, 1995, under BSA Cal. No. 673-53-BZ, the Board further amended the resolution to extend the time to obtain a certificate of occupancy, on condition that a new certificate of occupancy be obtained within 28 months from December 4, 1993, by April 4, 1996.

On June 12, 1997, under BSA Cal. No. 673-53-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 on condition that a new certificate of occupancy be obtained within 26 months of April 4, 1996, by June 4, 1998.

On April 10, 2007, under the subject calendar number, the Board further amended the resolution to permit the reinstatement of a prior Board approval of a gasoline service station, on condition that any and all use substantially conform to drawings as they apply to the objection filed with the application; the grant be for a term of 15 years, to expire on April 10, 2022; landscaping and fencing be installed and maintained as per the BSA-approved plans; the above conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained within one year of the date of the grant, by April 10, 2008; all conditions from prior resolutions not specifically waived by the Board remain in effect; the layout of the property and location and size of the fence be as approved by the Department of Buildings; all signage comply with C1 zoning 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; 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 term of the variance having expired, the applicant now seeks an extension. The applicant represents that it seeks to maintain the existing automotive station with service bays and accessory sales area and submitted updated plans demonstrating an ADA compliant ramp with associated handicap parking/ loading stalls to be repaved and restriped, additional landscaping, existing additional parking, and an existing trash enclosure, which were not shown on the previously BSA-approved plans. Additionally, the applicant states that the configuration of rooms in the interior of the existing building has been slightly modified to provide a larger sales area and a single restroom.

Over the course of hearings, the Board expressed concerns about location of drains, fencing, the car wash station, parking, landscaping and fencing at the subject site. In response, the applicant submitted images of the perimeter of the site depicting the landscaping; and updated plans depicting the dimensions of the existing ADA ramp, existing chain link fence, existing drain inlets, and the relocated car wash station.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans 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 23, 1955, as amended through April 10, 2007, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on April 10, 2032, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Board Approved: September 12, 2022 – Six (6) sheets'; and *on further condition*;

THAT the term of the variance shall expire on April 10, 2032;

THAT all light sources located on the lot line adjacent to residential uses shall be shielded to minimize any adverse effects on surrounding residences;

THAT no parking shall be permitted on the sidewalk;

THAT signage shall comply with C1 zoning district regulations;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 214-06-BZ'), shall be obtained within two years, by September 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;

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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 12, 2022.

2016-4176-BZII

APPLICANT – Akerman LLP, for Islamic Center of Jackson Heights, owner.

SUBJECT – Application November 18, 2021 – Extension of Time to Complete Construction of a previously approved variance (§ 72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR § 24-34 (front yard) and ZR § 24-35 (side yard) requirements, which expired on October 3, 2021. R4 zoning district.

PREMISES AFFECTED – 78-04 31st Avenue, Block 1149, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy for a previously approved variance, granted pursuant to Z.R. § 72-21, which expired on October 3, 2021, and permitted the construction of a three-story, plus cellar, house of worship (Use Group (“UG”) 4A), that does not comply with regulations for front yard and side yard, contrary to Z.R. §§ 24-34 and 24-35.

A public hearing was held on this application on August 8, 2022, after due notice by publication in *The City Record*, and then to decision on September 12, 2022. Commissioner Ottley-Brown performed an inspection of the site and the surrounding neighborhood.

The Premises are located on the northwest corner of 31st Avenue and 78th Street, within an R4 zoning district, in Queens. With approximately 38 feet of frontage along 31st Avenue, approximately 89 feet of frontage along 78th Street, and 3,382 square feet of lot area, the Premises are occupied by an unfinished, three-story, plus cellar, house of worship.

The Board has exercised jurisdiction over the Premises since October 3, 2017, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, within an R4 zoning district, the construction of a UG 4 house of worship that does not comply with the front yard and side yard regulations as set forth in Z.R. §§ 23-34

and 24-35, on condition that all work will substantially conform to drawings filed with the application; the following be the bulk parameters of the building: a front yard with a minimum depth of 10 feet fronting 31st Avenue, a front yard with minimum depth of 5 feet fronting 78th Street, and side yards with minimum depths of 0 feet and 5 feet; no speaker or amplified sound system be permitted outside of the building; people not be permitted to congregate in the front yards of the site before or after services; site managers and/or parking monitors be utilized to prevent congregating in the front yards of the site and prevent double parking at the site; the doors to the building remain closed during functions to protect surrounding neighbors from noise; the above conditions be listed on the certificate of occupancy; the substantial construction be completed pursuant to Z.R. 72-23; a certificate of occupancy be obtained within 4 years, by October 3, 2021; 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 portion 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 and obtain a certificate of occupancy having expired, the applicant now seeks an extension. The applicant represents that it does not seek any amendments to the plans previously approved by the Board. Since the Board’s initial approval, the applicant states that the subject building is approximately 80 – 85% complete and the remaining work includes finishing such as drywall, painting, installation of lights and fixtures, tiling of bathrooms, exterior final coating, and exterior site work such as installation of sidewalks and landscaping. The applicant attributes the delay in completion of construction and obtaining a certificate of occupancy to the COVID-19 Pandemic, specifically issues related to supply chain and the City’s moratorium on non-essential construction and workforce.

At hearing, the Board raised concerns regarding movement on the project within the four years since the prior BSA approval, and the applicant’s compliance with the conditions of the prior grant. The Board notes that the prior grant and this request for an extension of time to complete construction and obtain a certificate of occupancy is for a variance to construct a proposed three-story, plus cellar, house of worship and not a special permit. In response, the applicant submitted recent photographs of the site demonstrating the extent of the completed work, a compliance chart, and timeline of the remaining work and anticipated completion dates.

Based upon its review of the record, the Board has determined that the requested extension of time to complete construction and obtain a certificate of occupancy 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 *amend* the resolution dated October 3, 2017, so that as amended, this portion of the resolution shall read: “to extend the time to complete construction, to expire on September 12, 2026, *on condition*:

THAT following shall be the bulk parameters of the building: a front yard with a minimum depth of 10 feet fronting 31st Avenue, a front yard with minimum depth of 5 feet fronting 78th Street, and side yards with minimum depths of 0 feet and 5 feet;

THAT no speaker or amplified sound system shall be permitted outside of the building;

THAT people shall not be permitted to congregate in the front yards of the site before or after services;

THAT site managers and/or parking monitors shall be utilized to prevent congregating in the front yards of the site and prevent double parking at the site;

THAT the doors to the building shall remain closed during functions to protect surrounding neighbors from noise;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, within four years, by September 12, 2026;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (‘BSA Cal. No. 2016-4176-BZ’), shall be obtained within four years by September 12, 2026;

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 12, 2022.

167-55-BZIII

APPLICANT – Walter T. Gorman, P.E., P.C., for The Gargano Family Limited Partnership, owner; GSA Petroleum, lessee.

SUBJECT – Application December 1, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 7, 2015; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 20-65 Clintonville Street, Block 4752, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December

5-6, 2022, at 10 A.M., for continued 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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

548-69-BZIV

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

SUBJECT – Application July 29, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expires on May 25, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on June 6, 2018; Waiver of the Board’s Rules of Practice and Procedures. C2-3/R6B zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

174-96-BZII

APPLICANT – Sheldon Lobel, P.C., for 1108 Allerton Avenue, LLC, owner.

SUBJECT – Application December 13, 2021 – Extension of term and Waiver for a previously granted Variance (§72-21) permitting the operation of an existing food products manufacturing establishment (Use Group 17B) which expired on July 1, 2017; Amendment to permit modifications to a portion of the site; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 1108 Allerton Avenue, Block 4456, Lot 47, Borough of Bronx.

COMMUNITY BOARD #11BX

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ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

111-01-BZVI

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC., owner; Briad Wencco LLC, lessee.

SUBJECT – Application April 28, 2021 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy's) which expired February 2, 2021; Amendment requesting a change in hours of operation contrary to the previous board approval; Waiver of the Rules. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Block 810, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #17BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

215-06-BZIV

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; BP Products North America Inc. lessee.

SUBJECT – Application September 30, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on July 21, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

174-07-BZIII

APPLICANT – Eric Palatnik, P.C., for REMICA Property Group Corp., owner; BOLLA EM Realty, LLC, lessee.

SUBJECT – Application April 22, 2020 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an automotive service station (UG 16B), which expired on June 17, 2018; Extension of Time to Obtain a CO which expired on June 17, 2016; Waiver of the Board's Rules of Practice and Procedure. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, Block 6758, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2021-79-A

APPLICANT – Sheldon Lobel, P.C., for 38-60 Hotel, LLC, owner.

SUBJECT – Application November 22, 2021 – Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-3 zoning district.

PREMISES AFFECTED – 38-60 11th Street, Block 474, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application to establish common law vested rights to renew a building permit lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 421018605-01-NB, before the effective date of an amendment to Z.R. § 42-11. This application was filed in conjunction with BSA Cal. No. 2021-81-BZY, an application to establish statutory vested rights at the subject Premises which was granted on September 12, 2022.

A public hearing was held on this application on August 8, 2022, after due notice by publication in *The City Record*, and then to decision on September 12, 2022. Community Board 1, Queens, waived its recommendation of this application.

The Premises are located on the west side of 11th Street, between 38th Avenue and 40th Avenue, in an M1-3 zoning district, in Queens. With approximately 25 feet of frontage along 11th Street, 97 feet of depth, and 2,415 square feet of lot area, the Premises are occupied by an unfinished nine-story, 32-unit building for operation as a Use Group (“UG”) 5 transient hotel.

I.

DOB issued Permit No. 421018605-01-NB on June 7, 2016, authorizing the construction of a nine-story, 32-unit hotel at the Premises. DOB renewed the permit eight times,

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most recently on April 5, 2021, and the permit expired on October 28, 2021.

NYC City Council adopted the final M1 Hotel Text Amendment (“Amendment”) on December 20, 2018, which, under Z.R. § 42-111, prohibited UG 5 in M1 districts, except as permitted by a special permit issued by the City Planning Commission pursuant to Z.R. § 74-803 or as otherwise authorized by the Zoning Resolution.

Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy. However, due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021). Here, the applicant did not meet the deadline under Z.R. § 11-332(a), as tolled by subsequent Mayoral Emergency Executive Orders, to complete construction and obtain a certificate of occupancy.

II.

Because the deadlines for completion under Z.R. § 11-332(a) and subsequent Mayoral Emergency Executive Orders have lapsed, and the permit has expired, the applicant now seeks an extension of time for construction stating that the applicant has acquired a vested right under common law to complete the hotel.

III.

“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, the applicant argues 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. *See* Z.R. § 11-332. In particular, the applicant states that as of December 20, 2021, it has already completed site preparation, excavation, piling, shoring, 100% of the foundations, the installation of concrete slab, and the erection of two floors of steel for the proposed building at the Premises and states that this work represents 15% of the development project and constitutes substantial construction at the Premises. In support of this contention, the applicant submitted an affidavit from the property owner and photographs demonstrating the extent of the work completed at the site.

B.

Second, the applicant proposed that “substantial expenses” have been paid or incurred as irrevocable financial commitments, totaling approximately \$1,335,000.00 since starting the project. The applicant represents that this amount was expended on completion of the foundation, concrete slab, and steel framing work. In support, the applicant submitted financial information, including copies of canceled checks, that indicate the applicant’s construction related expenditures.

IV.

By letter dated August 18, 2022, the applicant requested to withdraw this application without prejudice. *Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, September 12, 2022.

2021-81-BZY

APPLICANT – Sheldon Lobel, P.C., for 38-60 Hotel, LLC, owner.

SUBJECT – Application November 22, 2021 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-60 11th Street, Block 474, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

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 (“DOB”), acting on New Building Application No. 421018605-NB, before the effective date of an

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amendment to Z.R. § 42-11.

A public hearing was held on this application on August 8, 2022, after due notice by publication in *The City Record*, and then to decision on September 12, 2022. Commissioner Ottley-Brown performed an inspection of the Premises and the surrounding neighborhood. Community Board 1, Queens, waived its recommendation of this application.

The Premises are located on the west side of 11th Street, between 38th Avenue and 40th Avenue, within an M1-3 zoning district, in Queens. With approximately 25 feet of frontage along 11th Street, 97 feet of depth, and 2,415 square feet of lot area, the Premises are occupied by an unfinished, nine-story transient hotel.

I.

On June 7, 2016, DOB issued Permit No. 421015605-01-NB for the erection of a nine-story, transient hotel at the Premises. The permit has since been renewed eight times, with the final renewal date on April 5, 2021 and expiration on October 28, 2021.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement of extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803.

Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. § 11-332(a) to complete construction and obtain a certificate of occupancy for the subject project was October 19, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction.

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 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).

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 states that as of December 20, 2021, it has already completed site preparation, excavation, piling, shoring, 100% of the foundations, the installation of concrete slab, and the erection of two floors of steel for the proposed building at the Premises and states that this work represent 15% the development project and constitute substantial construction at the Premises. In support of this contention, the applicant submitted an affidavit from the property owner and photographs demonstrating the extent of the work completed at the site. 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.

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B.

Second, the applicant submitted evidence that “substantial expenses” have been paid or incurred as irrevocable financial commitments, totaling approximately \$1,335,000.00 since starting the project. The applicant represents that this amount was expended on completion of the foundation, concrete slab, and steel framing work. In support, the applicant submitted financial information, including copies of canceled checks regarding the substantial construction related expenditures. 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.

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. 421018605-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring December 21, 2023.

Adopted by the Board of Standards and Appeals, September 12, 2022.

CORRECTION: This resolution adopted on September 12, 2022, under Calendar No. 2022-1-BZY, is hereby corrected to read as follows:

2022-1-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for JLAM Management LLC, owner.

SUBJECT – Application August 8, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-5 zoning district

PREMISES AFFECTED – 1227 Broadway, Block 831, Lot 68, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

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 (“DOB”), acting on New Building Application

No. 121191986-01-NB, before the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on August 8, 2022, after due notice by publication in *The City Record*, and then to decision on September 12, 2022. Commissioner Sheta performed an inspection of the Premises and the surrounding neighborhood. Community Board 5, Manhattan, recommends approval of this application on condition that the applicant and the Board of Standards and Appeals discuss and evaluate the merits of the applicant meeting the findings of Z.R. § 11-332(b)(3).

The Premises are an irregularly shaped lot, located at the northeast intersection of Broadway and West 30th Street, within an M1 zoning district, in Manhattan. With approximately 211 feet of frontage along Broadway, 165 feet of frontage along West 30th Street, and 30,155 square feet of lot area, the Premises are occupied by an unfinished, 38-story transient hotel.

I.

On August 19, 2015, DOB issued Permit No. 121191986-10-EQFN for construction equipment and fence at the Premises; Permit No. 121191986-01-FO EA for excavation at the Premises; and Permit No. 121191986-01-FO for foundation work, including support of excavation. On October 1, 2015, DOB issued Permit No. 121191986-01-NB for the erection of a 38-story, transient hotel at the Premises. On March 2, 2017, DOB issued Permit No. 121191986-04-PL for underground plumbing at the Premises.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement of extension of a transient hotel use required a special permit pursuant to Z.R. § 74-803. The applicant represents that the subject development vested automatically under the special vesting provisions of Z.R. § 42-111(e), because a foundation permit for the Development was lawfully issued on October 5, 2016, prior to April 23, 2018.

Additionally, pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the

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two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. §§ 11-332(a) and 42-11(e) to complete construction and obtain a certificate of occupancy for the subject project was December 20, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction.

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 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).

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 states that as of October 31, 2021 and based on

the current schedule for the project, approximately 97 percent of working days and the most complex portions of the development had been completed. The applicant represents that construction had been proceeding for 1,657 days, out of the total 1,703 days scheduled for the development. Furthermore, the applicant states the most difficult and complex portions of the development included completion of excavation and installation of support of excavation, completion of the foundation and completion of the superstructure of the development. The applicant states that the balance of the work remaining is the completion of minor interior work. In support of this contention, the applicant submitted an affidavit from the property owner and photographs demonstrating the extent of the work completed at the site. 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, \$183,035,845.06, or approximately 93 percent of the \$195,966,425.35 total project costs, since starting the project on completion of the complex aspects of the project. 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.

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. 121191986-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring December 21, 2023.

Adopted by the Board of Standards and Appeals, September 12, 2022.

170-93-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for JABE Contracting LLC, owner.

SUBJECT – Application August 25, 2020 – Proposed enlargement of a commercial building not fronting on a legally mapped street, contrary to General City Law §36. M3-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 220 Industrial Loop, Block

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7206, Lot 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

2018-188-A & 2018-189-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

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th 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 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.

SUBJECT – Application September 4, 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). R3X Special Richmond District.

PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

2020-82-A & 2020-83-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ranchers Best Wholesale Meats, Inc., owner.

SUBJECT – Application October 14, 2020 – Proposed development of a two (1) family dwellings partially located within the bed of a mapped street contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 51 & 53 Cortlandt Street, Block 1039, Lot (s) 39, 37, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

2020-91-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Maple Towers LLC, owner.

SUBJECT – Application December 16, 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 cellar and four-story, eight-family residential building prior to the adaption of a zoning text amendment on September 14, 1989 when the zoning was R6. R5 zoning district.

PREMISES AFFECTED – 109-52 54th Avenue, Block 2010, Lot 24, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2021-2-A thru 2021-7-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 99-21 Hollis Avenue LLC, lessee.

SUBJECT – Application January 13, 2021 – Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 99-21 Hollis Avenue aka 191-01/191-09/191-13/192-01/192-05/192-13 Hollis Avenue, Block 10839, Lot (s) 1, 50, 49, 48, 47, 46, Borough of Queens.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

MINUTES

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

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

2021-10-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Victory Boulevard Medical Holdings LLC, owner.
SUBJECT – Application January 19, 2021 – Proposed construction of a one-story commercial building (UG6) not fronting on a mapped street contrary to General City Law §36. M1-1 zoning district.
PREMISES AFFECTED – 3869 Victory Boulevard, Block 2784, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2021-20-A & 2021-21-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Winham Holdings LLC, owner.
SUBJECT – Application March 16, 2021 – Proposed development of a three-story residential building within the bed of a mapped street contrary to General City Law §35. R3-1 Lower Density Growth Management Area.
PREMISES AFFECTED – 106 & 108 Winham Avenue, Block 4049, Lot (s) 49, 48, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2022-4-BZY

APPLICANT – Sheldon Lobel, P.C., for President Sai, LLC, owner.
SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-4/R6B zoning district.
PREMISES AFFECTED – 529 President Street, Block 441, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for postponed hearing.

2022-17-A

APPLICANT – Carter Ledyard & Milburn LLP, for 25C LLC, owner.

SUBJECT – Application March 10, 2022 – 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. M1-2 zoning district.
PREMISES AFFECTED – 27 Stewart Avenue, Block 2994, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

CORRECTION: This resolution adopted on September 12, 2022, under Calendar No. 2016-4463-BZ, is hereby corrected to read as follows:

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative:.....0
Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 10, 2016, acting on New Building Application No. 321453707, reads in pertinent part:

The proposed building is contrary to:

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1. Proposed Use Group 3, Occupancy Group E, is not permitted Use in Zoning District M1-1 (ZR 42-00 and ZR 77-11).
2. Maximum allowable Floor Area in Zoning District M1-1 (ZR 43-122) and in Zoning District R5B (ZR 24-11) and ZR 77-22.
3. Maximum allowable Floor Area Ratio in Zoning District M1-1 (ZR 43-122) and in Zoning District R5B (ZR 24-11) and ZR 77-22.
4. Maximum allowable lot coverage in Zoning District R5B (ZR 24-11) and ZR 77-24.
5. Maximum Street Wall Height, Required Setbacks and Sky Exposure Plane in Zoning District M1-1 (ZR 43-43) and Zoning District R5B (ZR 24-521).
6. Front Yard Requirements in Zoning District R5B (ZR 24-34 and ZR 77-27).
7. Side Yard Requirements in Zoning District R5B (ZR 24-35 and ZR 77-27).
8. Rear Yard Requirements in Zoning District R5B (ZR 24-36 and 77-27).
9. Rear Yard Requirements in Zoning District R5B (ZR 24-35 and ZR 77-27).
10. Required yard along district boundary coincident with side lot line of a lot in Zoning District R5B (ZR 43-301).

And therefore, requires approval from the New York City Board of Standards and Appeals.

This is an application for a variance, pursuant to Z.R. §§ 72-21, 73-19, and 73-03 to permit, within an M1-1 zoning district, the construction of a Use Group (“UG”) 3 school contrary to regulations for use (Z.R. §§ 42-00 and 77-11), floor area, FAR (Z.R. §§ 43-122, 24-11, and 77-22), lot coverage (Z.R. §§ 24-11 and 77-24), height, setbacks, sky exposure plane (Z.R. §§ 43-43 and 54-521), front yard (Z.R. §§ 24-34 and 77-27), side yard (Z.R. §§ 24-35 and 77-27), rear yard (Z.R. §§ 24-36 and 77-27), side yard setback (Z.R. §§ 24-551 and 77-28), and required yard along district boundary regulations (Z.R. §§ 43-301). This application is brought on behalf of Mosdos Satmar BP (the “School”).

A public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, with continued hearings on October 20, 2020, February 9, 2021, October 19, 2021, and August 9, 2022, and then to decision on September 12, 2022. Community Board 10, Brooklyn, recommends approval of this application on condition that buses will not be permitted to remain parked at any time outside of the school. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood.

I.

The Premises are located at the southwest corner of the intersection of 14th Avenue and 32nd Street, located partially within an M1-1 zoning district and partially within an R5B zoning district, in Brooklyn. The Premises are an irregular, corner lot with approximately 120 feet of frontage

a long 14th Avenue, 140 feet of frontage a long 62nd Street, 16,000 square feet of lot area and are currently occupied by a two-story, commercial building.

II.

The Board has exercised jurisdiction over the Premises since April 19, 2005, when under BSA Cal. No. 291-03-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the proposed construction of a new four-story residential building on a site partially located within an M1-1 zoning district and partially within an R5 zoning district, contrary to Z.R. § 42-00, on condition that all work substantially conform to drawings as they apply to the objections noted and filed with the application; the following bulk parameters apply to the development approved herein: an FAR of 2.1; 26 residential units; a total building height of 57'-1", a street wall height of 36'-9", a setbacks of 15 feet on 14th Avenue and 32nd Street; and 15 parking spaces; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved conditions be considered approved 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.

By letter dated August 3, 2010, the Board stated that it had no objections to minor modifications to the approval at the subject Premises, specifically, a modification to the plot plan to provide a 10-foot front yard along 62nd Street and relocate the entry way to the parking garage on condition that the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, Building Code or any other relevant law.

III.

Originally, the applicant proposed to construct a six-story plus cellar building that would contain office space for the operation of the School; sufficient classrooms to accommodate the existing students as well as allow for the continued growth that the enrollment trend anticipates; and sufficient space to accommodate a gymnasium, cafeteria, auditorium, therapy rooms and accessory space for a dedicated library, computer rooms, home economics labs, a sewing room and other rooms necessary to accommodate the classes presently offered and to allow for space for additional elective classes. The proposed building would be six-stories with 77,623 square foot of floor area; an FAR of 4.85; street wall height of 81.65 feet; 75% lot coverage in the R5B zoning district; no front yard; no side yards; and a 25-foot rear yard above the first floor.

In response to the Board’s concerns about the scope and size of the proposed project, the applicant amended the application to propose to build a five-story, plus cellar, school building. Now, the proposed building would have five stories, with 70,569 square feet of floor area, an FAR of 4.41; a street wall height of 68.21'; 75% lot coverage in the R5B zoning district and 93% lot coverage in the M1-1

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zoning district; no front yard; no side yards; and a 25-foot rear yard above the first floor. The application proposes the planting of eight street trees on-site, with the remaining two required trees planted off-site, which the applicant states would allow for the maintenance of 20'-30' feet between every two trees, 25' between each tree and streetlight/utility pole, and 40' between a street tree and a corner, as per the Department of Parks and Recreation ("DPR") requirements. The applicant describes the composition of the building as such: the cellar would contain the lunchroom and kitchen for the entire School; the floor would contain the two lobbies for the School; the second floor would have 13 classrooms for kindergarten through second grade; the third floor would have 12 classrooms, three each for the third through sixth grade; the fourth floor would have 14 classrooms, three each for the seventh and eighth grades and two each for the 9th through 12th grades; and the fifth floor would have two home economics labs, two computer rooms, a swing room, a therapy/Title 1 room, an office, and an auditorium/multi-purpose room. Finally, the applicant states that the roof above the fifth floor would be an open play area for all students that would be primarily utilized between 11 a.m. and 3 p.m.

In the subject R5 and M1-1 zoning districts where the subject Premises are located, a maximum of 36,800 square feet of floor area is permitted for as-of-right community facility use; a maximum 2.3 FAR is permitted as per Z.R. §§ 24-11 and 43-122; a street wall with a maximum height of 30 feet is permitted in the R5B zoning district, as per Z.R. § 24-521 and 35 feet is permitted in the M1-1 zoning district, as per Z.R. § 43-43; a maximum lot coverage of 55% is permitted on the R5B portion of the lot, as per Z.R. § 24-11; a 10-foot front yard is required within the R5B portion of the lot, as per Z.R. § 24-34; two side yards measuring eight feet each are required within the R5B portion of the lot, as per Z.R. § 24-35; a 30-foot rear yard is required in the R5B portion of the lot, as per Z.R. § 24-36. Additionally, the R5B zoning district requires a community facility building to setback at its side yard above the lower of three stories or 35', as per Z.R. § 24-551. Furthermore, the portion of the lot within the M1-1 zoning district and beyond 100' of the corner has a rear lot line that coincides with the side lot line of an R5B zoning district. As such, the proposed building would be required to provide a 15' wide open area at curb level to be in compliance with Z.R. § 43-301. Z.R. § 77-24 details the lot coverage restrictions for lots divided by district boundary lines and states that in the subject zoning district, for residential portions of buildings, each portion of the zoning lot shall be governed by the lot coverage regulations specified for the district. As per Z.R. § 43-622, the subject M1-1 zoning district is exempt from lot coverage regulations.

IV.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the Premises' irregular shape and location within two disparate zoning districts—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. Furthermore, the applicant points to its programmatic needs which include (1) ample office space for the operation of the School; (2) sufficient classrooms to accommodate the existing student body, as well as allow for the continued growth that the enrollment trend anticipates; and (3) sufficient space to accommodate gymnasium and cafeteria space, an auditorium, therapy rooms, accessory space for a dedicated library, computer rooms, home economics labs, a sewing room, and other rooms necessary to accommodate both presently offered classes and additional electives, as support for this finding. In support of its programmatic needs' argument, the applicant submitted two Student Growth Charts, showing the existing and projected enrollment for the School over the first five and ten years, respectively, of the proposed building. The charts demonstrate that the School has 32 classes, in two buildings, serving 665 students ranging in age from 2 through 17. The proposed building would have 51 classrooms as well as therapy rooms, an auditorium, and other rooms needed to accommodate the School's existing curriculum and serve 1,285 students ranging in age from 2 to 17 years old. Moreover, the anticipated enrollment would be 325 pre-school students, ages 2 through 5, in 19 classes, with approximately 15-25 students per class; 720 students, grades 1 through 8, in 24 classes, with approximately 30 students per class; and 240 students, grades 9 through 12, in 8 classes, with approximately 30 students per class. The growth chart anticipates that the building would utilize all of the spaces within 5 years and reach full student capacity within 10 years.

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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a nonprofit institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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. The applicant maintains that the proposed building would be of character in and around residential zones, which contain many public and private schools which are substantially taller than surrounding buildings in their immediate zoning district. In support of this contention, the applicant

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submitted a tax map which illustrated that the proposed building height of 68.21' would be in line with schools such as PS 187, located at 1153 65th Street, two blocks northwest of the Premises, rises to 94.6' in an R5B zoning district; PS 176, located at 6801 12th Avenue, five blocks west of the Premises, rises to 93.4' in an R4-1 zoning district; and the AHRC Middle School, located at 1220 65th Street, four blocks west of the Premises, rises to 71' in an R5B zoning district. Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located; would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties encountered on this site are inherent in the unique needs of the School, as well as the unique shape of the lot and its location between two zoning districts with different use and bulk 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 notes that the variance request is the minimum necessary to develop a building at the Premises. The applicant notes that the classroom sizes are governed by a minimum square footage per student based on Department of Health and/or Building Code requirements. The applicant states that per the various requirements, its proposal includes the Pre-1A and kindergarten classrooms that provide 30 square feet per student, and the remainder of the classrooms for all of the elementary and high school students provide 20 square feet per student (with the exception of Head Start classrooms, which provide 35 square feet per student). In support of this contention, the applicant submitted a Square Footage Per Student Chart, showing the square footages and number of students for 39 schools in NYC School District 20, in which the Premises are located. The chart demonstrates the average gross square footage per student for these schools is 122.54, higher than the approximately 70 square feet per student being requested in the instant application. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

V.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject Z.R. § 73-19 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" as it meets the requirements of Sections 3204, 3205 and 3210 of the New York State Education Law. New York State Education Laws ("NYSEL"), Sections 3204, 3205, and 3210 set guidelines

for non-public schools regarding the manner of instruction that they offer, and the teachers they retain to provide such instruction; the hours of operation and number of days in the school year; policies of attendance; curriculum; accommodations for handicapped students; and student adherence to appropriate standards of behavior.

NYS Education Law 3204 officially mandates 8.5 hours of attendance for nonpublic-school students in grades 5-8, and 9 hours of attendance in grades 9-12, and NYS Education Law 3210 concludes that a minor may be permitted to attend for fewer hours, so long as school authorities approve the education that he or she receives in that timeframe as being substantially equivalent to the regulations laid out in NYS Education Law 3204. The applicant maintains that as per the New York State Education Department ("NYSED") Guidelines for Determining Equivalency of Instruction in Nonpublic Schools, the hours of instruction at a public school in New York State is five hours for grades one through six and five and one-half hours for grades 7-12. The applicant states that at the proposed School, Grades 1-8 would attend school from 8:45 a.m. to 4 p.m., for a total of 7.25 hours, and high school students would be in school from 9 a.m. to 4:30 p.m., a total of 7.5 hours. Finally, the applicant states that the School term begins in September and ends in June, and within this timeframe, at least 190 days of full-time instruction would be provided.

The applicant concludes that because the School provides full-time day instruction and a course of study that meets the requirements of the New York State Education Laws. The applicant represents that it maintains an active relationship with the NYS Education Department and the New York City Department of Education, participating in State and federally funded programs and contributing data for educational improvement. The applicant notes that it has received a license from the New York City Department of Health to operate a pre-school pursuant to Article 43 of the New York City Health Code. Accordingly, the Board has determined that the School's operations fall within the scope of this special permit.

A.

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 a adequate size in the neighborhood within a zoning district where the proposed school would be permitted as of right. The applicant states that it has been actively seeking sites in Brooklyn that would allow for a floor configuration to accommodate approximately 50 classrooms, a lunchroom/gymnasium, library, and several other spaces necessary for the School's daily use.

In support of this contention, the applicant submitted a letter from a registered broker stating that no lot area restriction was used in the search, so as to allow for the possibility of combining smaller lots into a single lot of

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sufficient size. The letter further asserts that a majority of the properties that were identified were between 1,500 square feet and 6,000 square feet, and while a few lots of adequate size were available, they all contained existing buildings occupied by tenants and were therefore unable to meet the School's needs. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are met.

B.

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 located less than 400 feet from an R3X zoning district, R4 zoning district, R4-1 zoning district, R4A zoning district, R4B zoning district, R5 zoning district, R5B zoning district, R6 zoning district, R6A zoning district, R6B zoning district, R7A zoning district, C4-2 zoning district, C4-2A zoning district, C4-3 zoning district, and C4-3A zoning district. Furthermore, the applicant declares that the Premises are partially located within an R5B zoning district and provided Zoning Map and Radius Diagram/Land Use Map to support this contention. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

C.

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 notes that it conducted a noise analysis in its Environmental Assessment Statement ("EAS") which concluded that based upon the analysis submitted, the School proposes to construct the building with windows with an Outdoor Indoor Transmission Class value of at least 38 dBA on all facades. Additionally, the applicant also proposes to provide an alternate means of ventilation to allow for a closed window condition. The applicant states that 14th Avenue has a "No Parking Monday through Friday, 8 a.m. to 6 p.m." sign. The School proposes to work with the New York City Department of Transportation ("DOT") to update the sign from a "No Parking" sign to a "No Standing" sign, with an interval of 7 a.m. - 6 p.m. Additionally, the applicant proposes to request from DOT an additional sign along 62nd Street, likewise indicating "No Standing 7 a.m. - 6 p.m. Monday through Friday". Additionally, the applicant submitted the following commitment letter as part of the proposed project:

This Letter of Commitment is to confirm our responsibilities related to the development regarding the installation of a proposed traffic signal at the following location:

- Intersection of 14th Avenue and 62nd Street ("Location A")

This Letter also addresses our responsibilities regarding the following location:

- Intersection of 14th Avenue and 63rd Street

("Location B")

Studies have determined that signal is warranted at Location. The School agrees to fund all costs associated with the design, installation of the traffic signal(s), proposed geometric modifications, traffic signs, and pavement markings removals/installations at this intersection.

At Location B, the School will fund additional studies to see if a new light is warranted. The School will be responsible for all costs associated with the monitoring program at Location B, as well as the subsequent design and construction of any improvement measures.

It is understood that for Location A, and, if the New York City Department of Transportation ("NYCDOT") find that traffic signals are warranted at Location B, and has issued its approval, the School will engage a design consultant who will submit the necessary signal design and timing plans, and who will work closely with the Signals Division at the NYCDOT (unless the City elects to provide the signal designs). All costs associated with the design, installation of the traffic signal(s), proposed geometric modifications, traffic signs and pavement markings removals/installations will be funded by the School. All signal work will be done by an approved electrical contract and under the supervision of NYCDOT Electrical Inspection.

Moreover, the applicant proposes to construct a barrier made up of two layers of acoustic fence, each layer being made of 1/8" thick heavy mineral filled visco elastic material, which would be set back six feet from the four-foot-high masonry parapet to allow FDNY access and to reduce visibility from the street. Accordingly, the Board finds that the requirements of Z.R. § 73-19(c) are met.

D.

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, the Board raised concerns over the safety of the students during pick up and drop off times, specifically how the School plans to ensure that the students effectively and efficiently enter and exit the Premises without impacting the surrounding uses or traffic. In response the applicant submitted the following operational plan for its drop offs and pick ups:

The School will utilize two separate entrances along 14th Avenue to accommodate the students. This will help ensure that they enter and exit the building as quickly as possible, without impacting the surrounding uses or traffic. Each bus will have at least one staff member on it with a walkie-talkie. At arrival and dismissal there are teachers and staff at each entrance to meet the buses and

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ensure that the students load and unload safely. The buses are equipped with GPS devices that are monitored by a staff member at the Premises. These devices ensure that the respective bus routes are being followed. Additionally, this system allows the School to arrange the bus routes so that the buses are scheduled to arrive in intervals. Before a bus pulls up to the School, the staff member will radio to the School to see if there is an available spot. If there is not, the bus will circle or slow its approach to wait for a space to open up. This will ensure that the buses are parked single file with no double-parking clogging the streets. After pickup and drop off, the buses will leave the Premises.

On average, it takes three to five minutes per bus to completely unload. Once empty, the buses leave the Premises to begin their other routes or to park for the day. At dismissal, the students are arranged within the building by bus color. This allows the students to be in order when their buses arrive. Once a bus pulls up in front or on the side of the Premises, a staff member on the street radios in to a staff member in the building, and the respective bus is dismissed. On average, it takes approximately five minutes for the students to load the buses and take their seats, and for the bus to then depart. The School buses are 34' long; as such, with the No Standing signs in place, it will be possible for the School to accommodate parking five buses at any given time along its total 260' of frontage. Given the available street frontage and the staggered arrival and dismissal schedules, the Premises can accommodate all of the buses at both arrival and dismissal for the preschool, as well as both arrival and early and late dismissal for the elementary and middle schools. There will be no bus parking on the streets in front of the Premises. The six existing buses for the School, along with six buses from the two boys' division locations, will be parked off-site, in a separate location leased specifically for that purpose. Once the building reaches capacity, an additional three buses will be added, resulting in a total of 15 buses parked in the off-site location (15 spots are available). In the event that this location is sold for development, the buses will be relocated to a new, off-site location.

After dismissal, the older students generally walk in groups to their houses or to mass transit. Since a majority of the teachers live in the immediate area and walk to school, they are able to monitor the students as they leave the school and for a majority of their trips home, ensuring their safety as well. As noted in our most recently submitted transportation analysis, students will utilize crosswalks to enter and exit the Premises; the School will resurface the pedestrian crossings

and corners in accordance with DOT recommendations. Staff will be positioned at all of the immediately surrounding intersections to ensure that students cross the street safely.

A traffic signal is currently in place at the intersection of 14th Avenue and 61st Street, as well as at the intersection of 13th Avenue and 62nd Street. Additionally, the School will be installing a new traffic signal at the intersection of 14th Avenue and 62nd Street, to mitigate delays in pedestrian crossing. This signal will be installed prior to the commencement of construction to help ensure the safety of the students when the school building is operational.

Accordingly, the Board finds that the requirements of Z.R. § 73-19(d) are met.

VI.

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. 17BSA050K, dated September 12, 2022. 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 October 5, 2018, the Landmarks Preservation Commission ("LPC") states that the properties located at 1370 62nd Street, 6210 14th Avenue, and 6202 14th Avenue have no architectural or archeological significance.

By letter dated August 7, 2019, the New York City Department of Environmental Protection ("DEP"), Bureau of Sustainability states that it has reviewed the June 2019 Environmental Assessment Statement ("EAS") for the proposed project and has the following comments and recommendations to BSA:

- Based on prior on-site and/or surrounding area land uses which could result in environmental contamination, DEP concurs with the EAS recommendation and an E-designation for hazardous materials should be placed on the zoning map pursuant to Section 11-15 of the New York City Zoning Resolution for the subject properties. The E-designation will ensure that testing and mitigation will be provided as necessary before any future development and/or soil disturbance. The applicant should be directed to coordinate further hazardous materials assessments through the Mayor's Office of Environmental Remediation ("OER").

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By letter dated September 23, 2019, DEP, Bureau of Environmental Planning and Analysis states that it has reviewed the downloaded logging of the noise data from the monitoring conducted on May 9, 2019, for the proposed project and finds the log information is consistent with the EAS report and completes the backup materials for the noise assessment.

By letter dated November 4, 2020, DEP, Bureau of Environmental Planning and Analysis states that it has reviewed the Air Quality and Noise chapters of the October 2, 2020 EAS and support materials and has the following comments:

Air Quality:

Based on the results of air quality analysis and review of the newly amended EAS dated October 2, 2020, with the modifications made, there are no expected air quality impacts. The building plans have been reduced from six floors to five floors. One playground was also shifted from the roof of the first floor to the ground floor of the proposed project site. DEP is verifying that the initial air quality determination stands based on the new design for the proposed project. Therefore, based on analysis carried out for air quality, there is no potential for significant adverse impacts.

Noise:

Based on the results of stationary source analysis and review of newly amended EAS dated October 2, 2020, there are no expected noise impacts. The amendments made to the playground section of the proposed project incorporated two play areas, one of which was shifted to the ground level (play yard). Considering the proposed attenuation for the play areas; there are no expected noise impacts on the surroundings or on the proposed project. Therefore, the results of noise assessment performed according to the City Environmental Quality Review Technical Manual have concluded that the project will not have any potential for adverse significant impact as it pertains to noise.

By letter dated August 24, 2022, the New York City Department of Transportation (“DOT”) states following the CEQR Technical Manual Level 1 (Trip Generation) and Level 2 (Trip Assignment) screening assessments, a detailed traffic analysis is not warranted as the site generated trips would not exceed the 50-peak hour vehicle trip-end threshold. Following the 2021 CEQR Technical Manual Level 1 (Trip Generation) and Level 2 (Trip Assignment) screening assessments, a pedestrian level of service (LOS) analysis was conducted for the weekday AM and PM peak hours at three sidewalks, two crosswalks, and six corners. In addition, traffic control warrant studies for the two unsignalized intersections at 14th Avenue and 62nd Street, and 14th Avenue and 63rd Street were prepared. The EAS identifies improvement measures at the following locations: 14th Avenue and 62nd Street: Upgrade pedestrian crossings (resurfacing) and all corners; and install a new traffic signal

14th Ave and 63rd Street: Upgrade northwest corner. To determine the extent to which future volume projections presented in the EAS and need for additional safety measures, the Applicant has committed to conducting a Transportation Monitoring Program (TMP). The TMP will include new data collection, analysis and a revised warrant study for the intersection of 14th Avenue and 63rd Street where a new traffic signal or an all-way stop control devices are not warranted at this time. The TMP will be performed three months after the first year of school occupancy (2023) and six months after full occupancy (anticipated 2033/2034). 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 each TMP as well as all necessary materials for NYC DOT’s review and approval.

The Applicant has also committed to the following in the attached commitment letter:

1. Installing a new traffic signal at the intersection of 14th Avenue and 62nd Street. The funding and installation will take place immediately subsequent to the Board’s approval of the application;
2. Preparing a Builders Pavement Plan (“BPP”) showing all proposed corner upgrades, including pedestrian ramp upgrades, and will address any future DOT comments related to the BPP; The School acknowledges that the drawings are for illustrative purposes only and will require DOT review and approval post-BSA approval; and
3. Upgrading the pedestrian crossings (resurfacing) and all corners of the intersection of 14th Avenue and 62nd Street, as well as the northwest corner of the intersection of 14th Avenue and 63rd Street. The Applicant will submit to NYC DOT all required materials needed to review and approve the above measures.

The Applicant will be responsible for all costs associated with the above measures, as well as the monitoring program and design and construction of any improvement measures or subsequent measures recommended by the TMP as per NYC DOT’s direction. NYC DOT will continue to participate in the review process related to the signal installation, upgraded pedestrian crossings, corners and ramps. The Applicant should submit all relevant materials such as the BPP as per NYC DOT specifications for NYC DOT review and approval.

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 73-19 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* the construction of a UG 3 school, contrary to regulations for floor area FAR (Z.R. §§ 43-122, 24-11, and 77-22), lot

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coverage (Z.R. §§ 24-11 and 77-24), height, setback and sky exposure plane (Z.R. §§ 43-43 and 24-521), front yard (Z.R. §§ 24-34 and 77-27), side yard (Z.R. §§ 24-35 and 77-27), rear yard (Z.R. §§ 24-36 and 77-27), side yard setback (Z.R. §§ 24-551 and 77-28) and required yard along a district boundary (Z.R. § 43-301) and 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 an R5 zoning district and M1-1 zoning district, the operation of a school, contrary to Z.R. §§ 42-00 77-11; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved September 12, 2022” — Twenty-Three (23) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum floor area of 70,569 square feet of floor area (4.41 FAR); a maximum street wall height of 68.21’; a maximum lot coverage of 75% on the portion of the lot located within R5B zoning district and 93% lot coverage on the portion of the lot located within the M1-1 zoning district; no front yard; no side yards; and a rear yard measuring 25’ above the first floor;

THAT there shall be no commercial catering on the site;

THAT the construction footprint of the proposed development shall be contained within the zoning lot line and shall not extend beyond the City sidewalks;

THAT the applicant shall prepare a BPP showing all proposed corner upgrades, including pedestrian ramp upgrades, and will address any future DOT comments related to the BPP (the applicant acknowledges that the drawings are for illustrative purposes only and will require DOT review and approval post-BSA approval);

THAT the applicant shall be responsible for upgrading the pedestrian crossings (resurfacing) and all corners of the intersection of 14th Avenue and 62nd Street, as well as the northwest corner of the intersection of 14th Avenue and 63rd Street and will submit to NYC DOT all required materials needed to review and approve the above measures;

THAT the applicant shall be responsible for funding a new traffic signal at the intersection of 14th Avenue and 62nd Street;

THAT all transportation measures as described in the Final EAS Chapter 16: Transportation and DOT Post-Approval Commitment Letter shall be implemented with final approval of measures to be determined by DOT;

THAT that an E-designation (E-686) is placed on the site to ensure proper hazardous materials remediation;

THAT that the applicant shall provide required fencing with a acoustical barrier around the play yard on the first floor and roof;

THAT a window-wall attenuation of at least 28 dB(A) will be provided for the façade facing 14th Avenue below a height of 20 feet;

THAT there shall be no amplified sound and lights beyond that required by the Building Code on the roof and in the play yard on the first floor;

THAT the applicant shall maintain an off-street parking lot for storage and a minimum of 12 school buses;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2016-4463-BZ”), shall be obtained within four years, by September 12, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2022.

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§ 73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR § 36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 10, 2019, acting on New Building Application No. 220662361, reads in pertinent part:

1. ZR 36-21: Proposed ambulatory care building (UG4) in a C4-1 zoning district, with less than the required parking (ZR 36-21) requires a special permit from the Board of Standards and Appeals.

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”) 4 ambulatory diagnostic or treatment facilities, contrary to Z.R. § 36-21.

A public hearing was held on this application on April

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27, 2021, after due notice by publication in *The City Record*, with continued hearings on September 27, 2021 and July 19, 2022, then to decision on September 12, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 10, Bronx, recommends denial of this application stating:

... [T]he only viable way to reach Co-op City is by car. Therefore, daily vehicular traffic is some of the worst in the City of New York and this application is requesting that we permit a reduction of required accessory off-street parking spaces. This Community Board has never rendered a favorable opinion on lessening the amount of required parking spaces for any development and especially for an ambulatory diagnostic or treatment facility such as this one. The applicant did not make clear why the reduction was needed and what hardship the property was experiencing to necessitate a reduction of approximately one hundred off-street parking spaces. On-street parking on Co-op City Boulevard and Dreiser Loop cannot and should not be the alternative. Moreover, this ambulatory diagnostic or treatment facility will share eighty-one spaces with a rehabilitation center on the other side of the lot. A simple review of the condition shows that the rehabilitation center uses nearly every single parking space as its disposal. The reduction of over one-hundred spaces would soon be an enormous regret when the site is fully operational....Bronx Community Board #10 cannot in good conscience support an off-street parking reduction to facilitate more buildable space in a community when on-street parking cannot be had.

The Board received three letters of objection citing concerns about the current lack of available parking, increased congestion and traffic in the surrounding area, and lack of infrastructure to support the proposed project. Additionally, the Board received a letter from a City Council Member expressing concerns about the existing lack of parking and public transportation in the area and the strain that the proposed project would have on the neighborhood infrastructure.

I.

The Premises are located on the northwest corner of the intersection of Co-Op City Boulevard and Dreiser Loop, within a C4-1 zoning district, in the Bronx. With approximately 232 feet of frontage on Co-Op City Boulevard, 610 feet of depth, and 148,773 square feet of lot area, the Premises are occupied by an existing 14-story, plus cellar, commercial building, containing a UG 3 long term nursing home and adult domiciliary care facility.

II.

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. Z.R. § 73-44 permits the

Board to reduce the number of accessory off-street parking spaces required under Z.R. § 36-21 for UG 4 ambulatory diagnostic or treatment facilities. Z.R. § 73-44 allows for a reduction in required off-street parking spaces to 1 space per 400 feet of new floor area. As a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the special permit is available.

III.

The applicant proposes to construct a new six-story community facility building to contain a proposed UG 4 ambulatory diagnostic or treatment facility, in addition to the existing UG 3 community facility building. The applicant states that the first, second, and third floors would contain accessory parking and the fourth through sixth floors would contain medical office space. The applicant further declares that the total proposed floor area would be 48,416 square feet, bringing the total floor area for the subject zoning lot to 234,011 square feet (1.57 FAR). Additionally, the applicant proposes to add 273 new accessory parking spaces to be located at grade and on the first floor of the building (81 spaces), the second floor (92 spaces), and the third floor (100 spaces), in addition to the existing 100 spaces on the property, totaling 373 total accessory parking spaces at the proposed site.

The applicant seeks relief pursuant to Z.R. § 73-44 to allow for the reduction in required off-street accessory parking to 1 space per 400 sq. ft. of new floor area. Pursuant to Z.R. § 36-21, one accessory space per 150 sq. ft. of new floor area is required. For the subject development, the maximum reduction would result in a total reduced requirement of 121 accessory parking spaces for the proposed floor area (48,416 square feet / 400). The applicant represents that the 121 accessory parking spaces that would be permitted via maximum application of the special permit plus the 104 accessory spaces required for the existing building would result in 225 total required accessory spaces, whereas the applicant is proposing 373 accessory spaces.

The applicant states that it would locate the proposed accessory off-street parking spaces on the southern portion of the subject lot, surrounding and in the proposed building. The applicant further describes that the parking area would be accessible via the existing access lane that provides access to the existing building. For the proposed building, the Board takes no position on the proposed slab height and if it constitutes floor area as per Z.R. § 12-10.

IV.

Because of concerns expressed by Community Board 10, Bronx, the community members, and elected officials and as the Board customarily does with applications under Z.R. § 73-44, at hearings, the Board directed the applicant to demonstrate that the application satisfies Z.R. § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community, including identifying reservoir spaces for attended parking on the zoning lot.

In response, the applicant submitted a parking study demonstrating that the maximum demand during peak hours

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for parking generated by the proposed uses at the site would be 212 spaces, weekdays from 9:00 a.m. to 10:00 a.m. and 10:00 a.m. to 11:00 a.m. and that such demand can be accommodated by the on-site accessory parking spaces and the reduction of 54 parking spaces would not create any significant parking impact.

Additionally, the applicant added 10 reservoir spaces for attended parking and to commit to certain safeguards and obligations, the applicant recorded the restrictive declaration on August 17, 2022, under CRFN # 2022000323434, committing to the following:

Whereas, the Medical Building and the Nursing Home will share a common parking area partially located on the Shared Zoning Lot;

Whereas, the BSA wishes to ensure that the parking for the Nursing Home will be preserved on the Shared Zoning Lot, and that an adequate number of spaces will be reserved at grade level for use by employees, residents and guests of the Nursing Home, and that the parking for the Medical Building will primarily be provided on the upper floors of the parking structure being constructed as part of the Medical Building on Parcel A;

Now, therefore, in consideration of the approval by the requested parking reduction special permit by the BSA, Declarant hereby declares as follows:

1. Declarant hereby covenants and agrees for themselves, their successors and assigns that 81 grade level parking spaces on Parcel A shall be reserved for primarily and on priority basis for the employees, residents and guests of the Nursing Home, including the posting of signage within the portion of the parking area on Parcel A;
2. The portion of the parking area on Parcel A shall at all times be maintained and kept clear and unobstructed to allow utilization of the parking spaces by employees, residents and guests of the Nursing Home;
3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
4. This declaration may not be modified, amended or terminated without the prior written consent of the BSA, except:
 - a. In the event the application pending at the BSA under Cal. No. 2019-32-BZ is not granted, or;
 - b. The building approved pursuant to Cal. No. 2019-32-BZ is not developed.

If the application is not granted or the building approved is not developed, as specified above, then this declaration may be modified or rescinding without prior written consent from the BSA;

5. Failure to comply with the terms of this declaration may result in the revocation of a special permit approval under Cal. No. 2019-32-BZ from the BSA;

6. This declaration shall be recorded at the city register's office against the Shared Zoning Lot and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to the Medical Building located on Parcel A.

Furthermore, the Board notes that if the applicant seeks to increase the number of parking spaces and, in turn, permanently or temporarily reduce the scope of the requested waiver if the demand is not sufficiently addressed by the study or the proposed design, it may do so by letter of substantial compliance.

V.

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. 19BSA090X, dated September 12, 2022. 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.

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. §§ 73-44 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*, on a site located within a C4-1 zoning district, the reduction of required accessory off-street parking space for a UG 4 ambulatory diagnostic or treatment facility, contrary to Z.R. § 36-21; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Board Approved September 12, 2022" – Eight (8) sheets; and *on further condition*:

THAT 81 parking spaces reserved at grade shall be

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reserved for employees, residents, and guests of the nursing home;

THAT the certificate of occupancy issued for the new building within which the ambulatory diagnostic or treatment facility (UG 4) is located shall state that no certificate shall thereafter be issued if the UG 4 ambulatory diagnostic or treatment facility 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;

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. 2019-32-BZ") shall be obtained within four years, by September 12, 2026;

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, September 12, 2022.

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 – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated August 13, 2019, acting on New Building Application No. 510113672, reads in pertinent part:

Eating and drinking establishments with a drive-through in C1 zoning districts are contrary to the provisions of ZR 32-15 and must be referred to the Board of Standards and Appeals pursuant to ZR 73-243.

This is an application for a special permit, under Z.R. §

73-243, to permit the construction and operation of a Use Group ("UG") 6 eating and drinking establishment, a Starbucks, with an accessory drive-through, on a site located within a C1-2 (R1-3) zoning district, contrary to Z.R. § 32-15.

A public hearing was held on this application on May 19, 2020, after due notice by publication in *The City Record*, with continued hearings on February 9, 2021, April 27, 2021, and October 5, 2021, and then to decision on September 12, 2022. Community Board 2, Staten Island, recommends approval of this application. The Board received two letters from a City Council Member who stated being "open to supporting the proposal," but expressed concerns regarding traffic volume, queuing, ingress and egress, parking, drainage, grading, and noise at the site.

The Premises are located on the west side of Richmond Avenue, between Rivington Avenue and Draper Place, in a C1-2 (R3-2) zoning district, in Staten Island. With approximately 196 feet of frontage along Richmond Avenue, 99 feet of depth, and 18,875 square feet of lot area, the Premises are occupied by a one-story commercial building and 20 accessory parking spaces.

The Board has exercised jurisdiction over the Premises since March 2, 1982, under BSA Cal. No. 746-81-BZ, when the Board granted a variance, pursuant to Z.R. § 72-21, to permit the enlargement in area and change in use of the accessory structure on the site into a retail store on condition that the variance be limited to a term of ten years from March 2, 1982, to expire on March 2, 1992; the term supersede the term granted under BSA Cal. No. 908-67-BZ; the hours of operation be limited to 7 a.m. to 11 p.m.; signs for the retail store conform to the C1 zoning district regulations; the existing ground sign may be retained; adequate landscaping be provided and maintained as suitable screening for adjoining parcels; the enlargement be constructed of face brick; the automotive service station be operated in such a manner to ensure that no congestion occurs at the business entrances and exits; all applicable laws, rules, and regulations be complied with; and that substantial construction be completed in accordance with Z.R. § 72-23.

On September 30, 1992, under BSA Cal. No. 746-81-BZ, the Board amended the resolution to legalize the addition of the bagel preparation area and to extend the term of the variance for a period of five years from March 2, 1992, to expire on March 2, 1997, on condition that the Premises be kept graffiti free; there be no advertising billboard or signs other than the Board-approved business signs; the Premises be in substantial compliance with proposed conditions; 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 September 30, 1993.

On September 12, 2000, under BSA Cal. No. 303-99-BZ, the Board further amended the resolution to legalize the operation of an open and enclosed auto sales establishment (UG 16), a minor auto repair service using only hand tools (UG 16), and a car wash (UG 16), and permitted an increase

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in floor area, on condition that no vehicles for sale be parked on the street or sidewalks; all signs and banners be limited to a total of 150 square feet; the Premises remain graffiti free at all times; 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. § 72-23.

On July 21, 2009, under BSA Cal. No. 303-99-BZ, the Board further amended the resolution to grant an extension of time to obtain a certificate of occupancy and legalize the change in use from an auto sales establishment (UG 16) to retail commercial (UG 5), on condition that a certificate of occupancy be obtained within six months from the date of the amended resolution, by January 21, 2010; all signage comply with C1 zoning district regulations; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configurations(s) not related to the relief granted.

The applicant now proposes to construct a one-story building with 1,200 square feet of floor area and an accessory drive-through for use as an entirely drive-through and walk-up Starbucks that would not contain indoor dining. The applicant's initial plans detailed the following proposed features: a window for walk-up service and an outdoor seating area with seven seats; a gated trash and recycling enclosure; a total of 12 accessory parking spaces, with six parking spaces abutting the existing commercial building and six parking spaces abutting the planned Starbucks; a six-foot-high, four-inch-thick sound barrier wall that would be located along the western lot line to shield abutting residences, and along a portion of the northern lot line abutting vacant land; and 27 light fixtures, three of which would be mounted on 15-foot-high poles.

While a UG 6 eating and drinking establishment is permitted as-of-right in a C1 zoning district, a UG 6 eating and drinking establishment with an accessory drive-through is not permitted as of right in a C1 zoning district, except as authorized by the Board pursuant to Z.R. § 73-243. Accordingly, the applicant seeks relief from the Board.

At hearings, the Board raised concerns about the level of noise, light, and traffic that would be generated by the proposed use. The Board directed the applicant to provide details showing how the applicant planned to reduce noise; shield neighboring residences from the light that would be cast by the applicant's proposed lighting scheme; address increased traffic volume; ensure smooth ingress and egress for vehicles including trucks; place appropriately sized curb

cuts; and provide a dequate parking at the Premises.

In response to these Board concerns, the applicant revised its proposal, submitting new plans that increased the height of the sound barrier to eight feet; lengthened the portion of the sound barrier located along the northern lot line; detailed the planting of evergreen trees along the western lot line to shield abutting residences; submitted that a sign would be posted at the entrance of the drive-through lane instructing drivers to "Please turn radio off. Be respectful of neighbors"; increased the inner drive-through radius at the ordering kiosk from 20 feet to 23 feet; moved the curb and bollards of the drive-through lane closer to the building to ensure a dequate space for the ingress and egress of trash trucks; stated that the existing bus stop signage would be retained and not relocated as originally proposed in the applicant's initial plans; and revised the SU-30 Vehicle Maneuverability Plan to portray how vehicles would have adequate space to traverse the site and the overhang would not destroy any proposed plantings that would be located along the western lot line.

By letter dated September 27, 2021, the New York City Department of Transportation ("DOT"), states that the proposed development would be unable to accommodate anticipated demand. Specifically, DOT finds that the proposed peak hour trip generation rate of 105 vehicle trips per hour would exceed the drive-through window's anticipated service rate of 60 vehicles per hour, resulting in a long and sluggish queue that likely would extend onto Richmond Avenue during peak traffic hours. DOT cautioned that the proposed development's inability to accommodate demand would present critical safety issues as the long queue would conflict with high-speed traffic on Richmond Avenue and the nearby bus stop at the corner of Richmond Avenue and Rockland Avenue. Furthermore, DOT provided the applicant with an analytical methodology by which to show that the drive-through queue would not extend onto Richmond Avenue and that vehicle storage on the Premises would be sufficient to accommodate the anticipated demand.

The Board posed these questions and requested that the applicant respond to them in its next submission. By letter dated June 13, 2022, the applicant requested to withdraw this application without prejudice. *Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals
September 12, 2022.

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CORRECTION: This resolution adopted on September 12, 2022, under Calendar No. 2019-277-BZ, is hereby corrected to read as follows:

2019-277-BZ

CEQR #20-BSA-038Q

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 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 20, 2019, acting on Alteration Type 1 Application No. 421893268, reads in pertinent part:

Respectfully requesting DOB zoning “Denial for Appeal to BSA” for the following zoning objection: Proposed plans are contrary to ZR 24-111 in that the proposed floor area ratio (FAR) exceeds the permitted 1.0; Proposed plans are contrary to ZR 23-34 in that the proposed front yard setback is less than the required 15’; Proposed plans are contrary to ZR 24-521 in that the proposed height exceeds 25’; Proposed plans are contrary to ZR 24-35 in that the proposed minimum required side yard is less than the required 11.0’.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R2A zoning district, the construction of a two-story, plus cellar, Use Group (“UG”) 4 house of worship which does not comply with zoning requirements for FAR (Z.R. § 24-111), front yard (Z.R. § 24-34), height (Z.R. § 24-521), and side yard (Z.R. § 24-35).

A public hearing was held on this application on November 30, 2021, after due notice by publication in *The City Record*, with continued hearings on May 8, 2022 and August 8, 2022, and then to decision on September 12, 2022. Community Board 8, Queens, recommends denial of this application citing concerns about the proposed use and size of the project, particularly in relation to the small size of subject lot.

The Board received 16 form letters of support for this application. Additionally, the Board received a letter from the Hillcrest Estates Civic Association, a petition with 58 signatures from neighbors, and 22 letters objecting to this

application, citing concerns over increased traffic and congestion, reduction of light and air to the surrounding properties, the height and size of the proposed building, noise from the proposed construction, and cohesion of the proposed design to neighborhood character.

I.

The Premises are located at the intersection of 166th Street and 81st Avenue on the northeast corner, within an R2A zoning district, in Queens. With approximately 40 feet of frontage along 166th Street Avenue, 110 feet of frontage along 81st Avenue, and 4,520 square feet of lot area, the Premises are currently occupied by an existing one-story, plus basement, community facility.

II.

The applicant proposes to construct a two-story, plus cellar, community facility with a front wall of 19’-6”; a total height of 30’ to the top of the pitched roof; a floor area of 3,553.3 square feet (0.79 FAR); a 5’ side yard parallel with 81st Avenue; and a side yard parallel with 166th Street ranging in depth from 8’ to 14.3’. Additionally, the applicant proposes a front yard of 8’ along 81st Avenue and 15’ along 166th Street. The applicant represents that the cellar level would comprise of a multipurpose room for 98 people; the first floor would contain a lobby and a men’s sanctuary with fixed seating and a 98-person capacity as per NYC Building Code Section 1004.7; and the second floor would be partially open to the sanctuary below, and would contain a women’s sanctuary, with fixed seating and a 42-person capacity per NYC Building Code Section 1004.7, a lobby area, an elevator, and an accessible restroom.

In the subject R2A zoning district, the Zoning Resolution requires a maximum floor area of 2,260 square feet of floor area (0.5 FAR); two side yards of 11.39’ each; two front yards with a minimum depth 15’ each; and permits a maximum height of 25’ for a community facility located on a corner lot, *see* Z.R. §§ 24-111, 24-34, 24-521, and 24-35.

Furthermore, the applicant represents that as per Z.R. § 25-31, the parking requirement for this use is one space for every ten persons, determined by the rated capacity of the room. The applicant declares that the largest room of assembly would be the first-floor main sanctuary, with a rated capacity of 98 people, necessitating 10 parking spaces. Furthermore, the applicant cites Z.R. § 25-33, which permits the waiver of up to 10 parking spaces in an R2A zoning district. And states that it would not be required to provide parking. Accordingly, the applicant seeks the relief requested 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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its programmatic needs and the restrictive bulk regulations stemming from the corner lot conditions—that create

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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 represents that its programmatic needs include (1) sufficient space for the Congregation's prayer services; (2) space for lectures, large group study and small group study; (3) a multipurpose room to be used as a space for Sabbath morning youth groups, and for special occasions for members of the Congregation; and (4) a mikvah to service the needs of the neighborhood, which does not have a local mikvah.

Furthermore, the applicant notes that strict adherence to the underlying bulk regulations would construct a building with 13'-8" in width, with a floor area of only 2,260 square feet (0.5 FAR). In support of this contention, the applicant submitted as-of-right plans which demonstrate that full compliance with the requirements would significantly reduce the building footprint and would not permit the applicant to meet its programmatic needs. The applicant represents that compliance with underlying zoning regulations would not permit the usable development of the Premises unless a variance were 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a not-for-profit religious institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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 points out that the proposed use in the subject R2A zoning district is as of right and the house of worship is currently in existence at the subject Premises. Additionally, the applicant submitted a Neighborhood Character Study which demonstrates that the proposed floor area and FAR are in line with other community facilities within a 1,000-foot radius of the Premises. Notably, the Queens Centers for Progress, a developmental disability facility located at 81-15 164th Street, has a floor area of 58,800 square feet (1.54 FAR) and its children's center, located at 82-25 164th Street, has a floor area of 16,772 square feet (0.91 FAR). The Meadow Park Rehabilitation and Healthcare Center, located at 78-10 164th Street, has a floor area of 31,236 square feet (1.74 FAR). Finally, St. John's University, located at 8150-A Utopia Parkway, contains 4,687,440 square feet of floor area (1.14 FAR). Additionally, of the 19 corner lots with a front yard that falls within an approximately 400-foot study radius 17 (89%) have at least one front yard of under 15', with 11 (58%) maintaining at least one front yard of 8' or fewer.

Moreover, of the 16 corner lots whose side yards fall within approximately 400' of the Premises, 11 (69%) contain at least one side yard of 5' or fewer in width. The applicant posits that the 13' side yard on the neighboring Lot 68, to the west of the Premises, would ensure that adequate separation between the Premises and that adjacent lot, and the proposed 5' side yard along the southern lot line is compliant with the underlying side yard regulations for a residential use.

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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, which have limited the applicant's ability to meet its programmatic needs. In support of this contention, the applicant submitted the full ownership history of subject site to support the assertion that it was never in common ownership with any of the neighboring lots. 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 notes that the variance request is the minimum necessary to develop a community facility at the Premises. The applicant submits that the proposed building is designed specifically to achieve the applicant's programmatic needs. The applicant posits that although the proposed use is as of right, it could not achieve its needs if forced to comply strictly with the underlying bulk regulations. 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.

At hearing and in response to community concerns, the Board raised concerns regarding the scope of the proposed project, landscaping, and noise. In response, the applicant submitted a revised plan reducing the number of proposed stories from three to two, proposing above grade landscaping, fencing, and an acoustical barrier around the HVAC system on the roof. Additionally, the applicant proposed a redesigned building would feature opaque and inoperable windows along the southern lot line, which borders Lot 23, and the western lot line, which borders Lots 68 and 67, to protect the privacy and reduce any noise from the house of worship. Additionally, the operable windows along the northern and eastern lot lines will have a minimum STC-28 rating.

V.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an

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environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 20BSA038Q, dated September 12, 2022. 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.

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.

VI.

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*, the construction of a two-story, plus cellar, UG 4 house of worship that does not comply with the zoning requirements for floor area, FAR (Z.R. § 24-111), front yard (Z.R. § 24-34), height (Z.R. § 24-521) and side yard (Z.R. § 24-35); *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved September 12, 2022” — Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a total height of 30' to the top of the pitched roof; a floor area of 3,553.3 square feet (0.79 FAR); a 5' side yard parallel with 81st Avenue; a side yard parallel with 166th Street ranging in depth from 8' to 14.3'; a front yard of 8' along 81st Avenue and 15' along 166th Street;

THAT for the above ground planting beds, a minimum soil depth of 3'-6" for trees and 3'-0" for shrubs shall be provided;

THAT all planting areas above the cellar shall have a drainage system to prevent collection and pooling of water within the planted area and from impacting the cellar floor;

THAT a adequate engineering measures shall be taken to minimize any impact to the cellar floor;

THAT all side lighting shall be directed down and away from adjacent residential lots;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-277-BZ”), shall be obtained within four years, by September 12, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2022.

2020-69-BZ

APPLICANT – MBA Architects, for William Moses, owner.

SUBJECT – Application September 9, 2020 – Variance (§72-21) Variance (§72-21) to permit the legalization of dwelling units contrary to ZR 42-10. M1-1 zoning district. PREMISES AFFECTED – 44 New Lots Avenue, Block 3860, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #16BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 20, 2020, acting on Application Type Alteration 1 No. 322084533, reads in pertinent part: “Objection #1. ZR 42-02: Proposed Use Group 2 residential dwelling is not permitted as-of-right in a manufacturing district M1-1. Obtain BS&A approval.”

This is an application for a variance, pursuant to Z.R. § 72-21, to legalize residential dwelling units located in an M1-1 zoning district, contrary to Z.R. § 42-02.

A public hearing was held on this application on February 28, 2022, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2022, and then to decision on September 12, 2022.

The Premises are located on the south side of New Lots Avenue, between Hegeman Avenue and Junius Street, within an M1-1 zoning district, in Brooklyn. With approximately 42 feet of frontage along New Lots Avenue, 58 feet of depth, and 2,593 square feet of lot area, the Premises are occupied by an existing two-story commercial building with approximately 5,180 square feet of floor area.

The applicant proposes to convert the second floor of the existing building to residential use. Specifically, the applicant proposes to create four dwelling units on the second floor: a one-bedroom unit with approximately 487 square feet, a one-bedroom unit with approximately 420 square feet, a studio unit with approximately 430 square

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feet, and a studio unit with approximately 420 square feet. The applicant states that the proposed renovations would include the provision of windows in the dwelling spaces; construction of walls to separate the four dwelling units and the hallway; replacement of the existing doors, frames, and hardware with new, fire-rated features; installation of a waterproof membrane in the bathroom floors and shower stalls; extension of the existing fire escape; and the inclusion of a 30-inch workspace in the kitchen. In the subject M1-1 zoning district, residential use is prohibited pursuant to Z.R. § 42-02.

At hearings, the Board raised concerns about the strength of the application with respect to Z.R. § 72-21(a), (b), and (d). In particular, the Board expressed that the applicant's financial calculations were not completed in accordance with acceptable standards, and the Board instructed the applicant to submit revised calculations of cost and a comparative feasibility analysis, to be prepared by a real estate finance professional such as an accountant or a real estate broker, to enable the Board to assess whether the applicant has suffered a unique hardship under Z.R. § 72-21(a), faced financial infeasibility under Z.R. § 72-21(b), and undergone hardship that was not self-created under Z.R. § 72-21(d). Moreover, the Board raised concerns about the lack of information provided by the applicant regarding prior use at the Premises. The Board thereby directed the applicant to obtain and review Sanborn and Bromley maps and determine which uses occurred at the Premises prior to 1930, when the building was built, and since 1930, to provide the Board with a factual basis on which to ascertain whether the applicant's hardship was self-created under Z.R. § 72-21(d) and whether certain environmental review procedures would be necessary.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by letter dated August 29, 2022, the applicant requested to withdraw this application without prejudice. *Therefore, it is Resolved*, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, September 12, 2022.

2017-269-BZ

APPLICANT – David L Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2019-304-BZ & 2019-305-A

APPLICANT – Sheldon Lobel, P.C., for 82 Willis, LLC, owner

SUBJECT – Application December 19, 2019 – Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §§23-662(a) and 123-662 (b)) (height). Waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district.

PREMISES AFFECTED – 180 East 132nd Street, Block 2260, Lot 180, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2020-36-BZ

APPLICANT – Eric Palatnik, P.C. for Bolla City Holdings, LLC., owner.

SUBJECT – Application April 27, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 8401 Flatlands Avenue, Block 8005, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

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2021-55-BZ

APPLICANT – Eric Palatnik, P.C., for H & Z Building Corp., owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district.

PREMISES AFFECTED – 134-16 35th Avenue, Block 4958, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2022-10-BZ

APPLICANT – Sherry and O’Neill, for RFR/K 55 Prospect Owner LLC, owner; Vivvi, Inc., lessee.

SUBJECT – Application February 4, 2022 – Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Vivvi*) contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

PUBLIC HEARINGS

MONDAY-TUESDAY, SEPTEMBER 12-13, 2022
2:00 P.M.

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

ZONING CALENDAR**233-15-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP., for CSC 4540 Property Co. LLC, owner.

SUBJECT – Application October 2, 2015 – Variance (§72-21) to permit a mixed-use residential building with retail on the ground floor, contrary to use regulations (ZR §42-10), maximum building height (ZR §62-341(c)(2), tower floor plate in excess of 7,000 sq. ft. (ZR 62-341(c)(4)), and setback above base height from a shore public walkway (ZR §62-341(a)(2). M1-4 ZD and waterfront area.

PREMISES AFFECTED – 45-40 Vernon Boulevard, Block 26, Lot(s) 4 & 8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2020-10-BZ

APPLICANT – Law Office of Lyra J. Altman, for Penina Feltman and Scott M. Feltman, owners.

SUBJECT – Application January 16, 2020 – 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.

PREMISES AFFECTED – 609 Jarvis Avenue, Block 15595, Lot 25, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2020-51-BZ, 2020-53-BZ, 2020-52-A & 2020-54-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Nord, LLC, owner.

SUBJECT – Application June 12, 2020 – Variance §72-21 to permit the development of a self-storage warehouse (UG 16) contrary to ZR 22-10; located on a site not fronting on a mapped street contrary to General City Law §36. M1-1 and R3-2 zoning district.

PREMISES AFFECTED – 105 Ridgeway Avenue, Block

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2610, Lot 150, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for postponed hearing.

2021-50-BZ

APPLICANT – Friedman, P.E., for Lawrence Charitable Trust, owner; Hadran Academy Inc., lessee.

SUBJECT – Application September 12, 2022 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Hadran Academy) contrary to ZR §42-00. Variance (§72-21) to permit the development of the building contrary to underlying bulk regulations. M1-1, R5 zoning district. Special Ocean Parkway District.

PREMISES AFFECTED – 50 Lawrence Avenue, Block 5422, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2022-8-BZ

APPLICANT – Cuddy & Feder LLP, for AP Wireless II, LLC, owner; Crown Castle USA Inc., lessee.

SUBJECT – Application January 19, 2022– Variance (§72-21) to permit an existing cellular monopole in excess of permitted height requirement contrary to ZR §33-43. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 183-01 Harding Expressway, Block 7067, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 18, 2022, at 10 A.M., for continued hearing.

2022-27-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Success Academy Charter Schools, Inc., owner.

SUBJECT – Application May 11, 2022 – Special Permit (§73-19) to permit the construction of a new school (UG 3) (Success Academy) contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 101 East 150th Street, Block 2354, Lot 1, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2022-53-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD,

LDGMA.

PREMISES AFFECTED – 33 Hempstead Avenue, Block 3808, Lot 4. Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

2022-54-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application) within Breezy Point. R4 ZD, LDGMA.

PREMISES AFFECTED – 128 ½ Roxbury Avenue, Block 16340, Lot 50. Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

2022-55-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA.

PREMISES AFFECTED – 175 Father Capodanno Boulevard, Block 3122, Lot 118. Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

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2022-56-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA.

PREMISES AFFECTED – 231 Moreland Street, Block 3738, Lot 30. Borough of Staten Island

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

2022-57-A

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Legalization of the reconstruction of a single family home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program not fronting on a legally mapped street contrary to General City Law §36. Sheepshead Bay Courts, R4-1 ZD.

PREMISES AFFECTED – 24A Mesereau Court, Block 8797, Lot 101. Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 3-4, 2022, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

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CORRECTION: This resolution adopted on September 13, 2021, under Calendar No(s). 2018-68-A thru 2018-90-A, is hereby corrected to read as follows:

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 – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

I.

The decision of the Department of Buildings, dated April 20, 2018, acting on New Building Application Nos. 520322945, 520319922, 520322936, & 520319904, reads in pertinent part:

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

A. No certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.

B. Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street of frontage space contrary to section 501.3.1 of the 2014 NYC Building Code.”

This is an application, in conjunction with BSA Cal. No. 2018-70-A through 2018-86-A, 2018-89-A & 2018-90-A, under General City Law § 36 to permit, in an R3X zoning district and in the Special South Richmond Development District, the construction of 23 detached residences that do not front on a mapped street.

II.

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 June 2, 2020, October 19, 2020, February 8, 2021, and May 10, 2021, and then to decision on September 13, 2021.

The Premises are located in an R3X zoning district in the Special South Richmond Development District (“SSRDD”) on Staten Island, and is an irregular, approximately 511 feet long by 260 feet deep, 133,191 square foot zoning lot and tax lot (tax lot 100 on tax block

6517) set back approximately 257 feet 7 inches from Arbutus Avenue (an un-mapped Corporation Counsel Opinion street as of March 8, 1985), and accessed from Arbutus Avenue only by existing 410.81 feet long Santina Drive, a 30'-wide privately-owned, unmapped roadway that at present accesses three existing houses, built in approximately 1990, on tax lots 58, 59, and 60. Only lot 60 has approximately 44 feet of frontage on Arbutus Avenue, independent of the 15-foot-wide portion of Santina Drive located on the lot 60 tax lot. Lots 58 and 59 rely entirely on Santina Drive for access. Lots 58, 59, and 60 received GCL § 36 waivers pursuant to BSA Calendar Numbers 765-87-A, 766-87-A, and 767-87-A. Tax lots 58 and 59 contain single-family residences, each with a two-car garage. Tax lot 60 contains a two-family residence with a two-car garage. Denise Court, a 32-foot-wide privately owned, unmapped roadway connecting Arbutus Avenue to the residences fronting on Denise Court and to the northwest corner of the Premises is proposed to provide a fire apparatus access only route to the Premises by virtue of an access easement agreement.

III.

The applicant proposes to subdivide the current zoning lot into 23 zoning lots and construct 23 two-family detached homes accessed from Arbutus Avenue by an existing private unmapped roadway, Santina Drive, and fronting each new residence on the prolongation of Santina Drive. The applicant further states that the residences would vary in design and size from approximately 2,450 square feet to 3,097 square feet of floor area; would each be two stories with a cellar; and would be fully sprinklered. Additionally, the applicant states that the residences would conform to all the underlying zoning district bulk requirements as well as the requirements of the South Richmond Development District.

In response to Board comments throughout this application and BSA Cal. No. 2018-70-A through 2018-86-A, 2018-89-A & 2018-90-A, the applicant reduced and revised the proposal and seeks to prosecute the application under with BSA Cal. No. 2018-70-A through 2018-86-A, 2018-89-A & 2018-90-A. Accordingly, by letter dated August 17, 2021, the applicant requested to withdraw this application.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, September 13, 2021.

***The resolution has been amended. Corrected in Bulletin Nos. 35-39, Vol. 107, dated September 23, 2022.**

BULLETIN

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October 14, 2022

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2022-76-BZ

175-33 Horace Harding Expressway, Block 6890, Lot(s) 0024, Borough of **Queens, Community Board: 11**. Re-instatement (11-41) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on November 11, 1989; Amendment to convert automotive service bays to an accessory convenience store; Extension of Ti C2-2 in R3-2 district.

2022-77-A

168 North 10th Street, Block 2305, Lot(s) 0010, Borough of **Brooklyn, Community Board: 1**. Appeal seeking the revocation of work permits issued by the New York City Department of Buildings. The appeal argues that the permits were improperly issued. C1-4/R6A zoning district. R6A, C1-4 district.

2022-78-BZ

1512 Union Street, Block 1400, Lot(s) 0006, Borough of **Brooklyn, Community Board: 9**. Variance (§72-21) to permit the construction of a three-story and cellar house of worship (UG 4A) contrary to ZR §33-121 (FAR) and ZR §33-431 (height). C2-3/R4 zoning district. C2-3 district.

2022-79-BZ

9000 Shore Road, Block 6078, Lot(s) 0010, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-434) to permit the reduction of 56 accessory off-street parking spaces required for 559 existing AIRS housing units to facilitate the development of a new AIRS building containing 137 income restricted housing units contrary to ZR §25- R7A & R3-1 district.

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

CALENDAR

PUBLIC HEARINGS
MONDAY-TUESDAY, NOVEMBER 14-15, 2022
10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, November 14th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday November 15th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

164-60-BZ

APPLICANT – Carl A. Sulfarò, Esq., for Luciana Azizian, owner.

SUBJECT – Application March 8, 2022 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on April 10, 2019; Waiver of the Board's Rules of Practice and Procedures. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 100-20 Metropolitan Avenue, Block 3895, Lot 32, Borough of Queens.

COMMUNITY BOARD #4Q

197-05-BZ

APPLICANT – Law Office of Jay Goldstein, for 813 & 815 Broadway LLC, owner.

SUBJECT – Application August 8, 2022 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial which expires on April 29, 2022; Extension of Time to Obtain a Certificate of Occupancy; Amendment of the Board's condition that no further extension be considered; Waiver of the Board's Rules. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, Block 563, Lot 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

203-15-BZV

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Redding Tammany Owner LLC, owner.

SUBJECT – Application June 22, 2022 – Amendment of a previously approved Variance (§72-21) which permitted the restoration, reuse, and enlargement of an existing commercial building. The amendment seeks to modify a Board condition that to allow deliveries and trash removal for the retail tenant to occur in the commercial zoning district rather than the residential district as approved. C6-4 and R8B Special Union Square District.

PREMISES AFFECTED – 44 Union Square East, Block 872, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

2021-53-A thru 2021-54-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ciro and Maurizio Asperti, owners.

SUBJECT – Application August 10, 2021 – Proposed development of two semi-detached one-family residential buildings located partially within the bed of a mapped street contrary to General City Law §35. R3-1 zoning district.

PREMISES AFFECTED – 45 & 47 Ocean Avenue, Block 3121, Lot(s) 36 & 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

2021-72-A

APPLICANT – Sheldon Lobel, P.C., for Chaim S. Metz, owner.

SUBJECT – Application November 15, 2021 – Proposed enlargement of an existing building within the bed of a mapped street contrary to General City Law (§35). R2X zoning district.

PREMISES AFFECTED – 7-11 Annapolis Street, Block 15570, Lot 32, Borough of Queens.

COMMUNITY BOARD #14Q

2021-84-A

APPLICANT – David L. Businelli, for Pleasant Plains Estates, owner; Diane Rivela, President, lessee.

SUBJECT – Application December 8, 2021 – Proposed construction of a one story and cellar retail building (UG6) with the widening line of Amboy Road contrary to General City Law Section 35 in an C1-1 in R3X SRD.

PREMISES AFFECTED – 6301 Amboy Road, Block 7533, Lot 142, Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-2-A

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for RXR-LBA Red Hook Owner LLC, owner.

SUBJECT – Application January 11, 2022 – Application to permit the construction within the unbuilt portion of a mapped street contrary to General City Law §35 and ZR §72-01(g). M3-1 zoning district.

PREMISES AFFECTED – 728 Court Street, Block 623, Lot(s) 1, 20, 62 and 93, Borough of Brooklyn.

COMMUNITY BOARD #6BK

CALENDAR

2022-11-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Jeremiah Smith, owner.

SUBJECT – Application February 14, 2022 – Proposed development of a detached three-story, two family residential dwelling partially inside of the bed of a mapped street contrary to General City Law §35. R3X (Special Richmond Development District).

PREMISES AFFECTED – 95 Pine Terrace, Block 6245, Lot 6, Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-20-A thru 2022-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Richmond Terrace Development LLC, owner.

SUBJECT – Application April 4, 2022 – Proposed development of a one-story warehouse building partially located within the bed of mapped street contrary to General City Law §35. M1-1 zoning district.

PREMISES AFFECTED – 724, 726 & 728 Richmond Terrace, Block 69, Lot(s) 126, 124, 122, Borough of Staten Island.

COMMUNITY BOARD #1SI

2022-25-A

APPLICANT – Law Office of Fredrick A. Becker, for Giorgio Zeolla and Angela De Castro Zeolla, owners.

SUBJECT – Application April 13, 2022 – Proposed enlargement of an existing dwelling partially within the bed of a mapped street contrary to General City Law §35. R4B zoning district.

PREMISES AFFECTED – 88-63 75th Avenue, Block 3875, Lot 119, Borough of Queens.

COMMUNITY BOARD #4Q

ZONING CALENDAR

2020-85-BZ

APPLICANT – Eric Palatnik, P.C., for 114 Kingsland LLC, owner.

SUBJECT – Application October 28, 2020 – 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.

PREMISES AFFECTED – 114 Kingsland Avenue, Block 2840, Lot 3, Brooklyn.

COMMUNITY BOARD #1BK

2021-1-BZ

APPLICANT – Capell Barnett Matalon & Schoenfeld LLP, for Trinity Lutheran Church, owner.

SUBJECT – Application January 8, 2021 – Variance (§72-21) to permit the enlargement of a school (Trinity Lutheran Church) contrary to underlying bulk requirements. R6B and R6A zoning districts.

PREMISES AFFECTED – 31-18 37th Street, Block 649, Lot 42, Borough of Queens.

COMMUNITY BOARD #1Q

2021-23-BZ

APPLICANT – Law Office of Lyra J. Altman, for Abraham Shiloach and Deborah Shiloach, owners.

SUBJECT – Application March 23, 2021 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence. Waiver of yards, open, lot coverage, perimeter wall. R3-2 zoning district.

PREMISES AFFECTED – 2315 Avenue S, Block 6829, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2021-82-BZ

APPLICANT – Eric Palatnik, P.C., for ADL 218 Hamilton LLC, owner.

SUBJECT – Application November 23, 2021 – Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. M1-1 zoning district.

PREMISES AFFECTED – 218 Hamilton Avenue, Block 513, Lot(s) 29,36 (tent. 29), Brooklyn.

COMMUNITY BOARD #6BK

Shampa Chanda, Acting Chair/Commissioner

MINUTES

**PUBLIC HEARING
MONDAY-TUESDAY, OCTOBER 3-4, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

CORRECTION: This resolution adopted on October 3, 2022, under Calendar No. 169-49-BZ, is hereby corrected to read as follows:

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

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated

April 14, 2020, acting on Alteration Type 1 Application No. 520378449, reads in pertinent part:

1. ZR 11-412: The proposed alteration and extension of an existing Automotive Service Station (Use Group 16) located in a R3X – detached residence district/SRD – South Richmond Development Zoning District is not permitted therefore, refer to the Board of Standards and Appeals.

This is an application for an amendment of a variance, pursuant to Z.R. § 11-412, to permit, within an R3X zoning district, the enlargement of a Use Group (“UG”) 16 automotive service station and the addition of an accessory retail sales area.

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on June 14, 2022, and then to decision on October 3, 2022. Community Board 3, Staten Island, recommends disapproval of this application, stating in part:

- Enlargement infringes on the zoning rights of existing homeowners who live in residential neighborhoods, where is the zoning protection for homeowners?
- Expansion will alter appropriate size, scale and composition of small town character of neighborhood.
- There is no guarantee that succeeding owners will continue use group.
- Convenience store operation after gas and service is closed will create increased road traffic where none exists now.
- The addition of a gas pump canopy will increase undesirable lighting for neighbors.
- Building height will increase by at least 5 feet intruding on neighbor’s open vision.
- Increase footprint of building expanding width to Arbutus Avenue will obstruct view for adjacent homeowner on Arbutus.
- Automobile laundry infers car wash, change use group for repair bays to automobile service.

The Premises are located on the southeast corner of the intersection of Amboy Road and Arbutus Avenue, within an R3X zoning district and within the Special South Richmond Development District, in Staten Island. With approximately 105 feet of frontage along Amboy Road, 119 feet of depth, and 12,495 square feet of lot area, the Premises are occupied by a three-story automobile repair facility.

The Board has exercised jurisdiction over the Premises since June 7, 1960, when the Board, under the subject calendar number, granted a variance to permit the reconstruction of a gasoline service station and legalize uses including an office, lubricatorium, the sale of auto accessories, a non-automatic car wash, minor auto repair services with hand tools only, and the parking of more than five motor vehicles waiting to be serviced on condition that the work be done in accordance with drawings filed with the application; tire racks, vending machines, and temporary signs not to be used on the Premises; all laws, rules, and regulations applicable be complied with; all permits, including a certificate of occupancy, be obtained; and all work completed within the requirements of the Zoning Resolution.

On June 21, 1960, the Board, under BSA Cal. No. 17-59-A, granted an appeal to permit, pursuant to General City Law § 35, the placement of curb cuts on the bed of a mapped street on condition that all requirements of BSA Cal. No. 169-49-BZ be complied with, and a certificate of occupancy be obtained.

The applicant now proposes to increase the floor area of the existing accessory automotive service station by approximately 738 square feet, and to utilize this additional space to create a third service bay and extend the length of one of the existing service bays by approximately 200 square feet. The applicant also proposes to construct an accessory retail convenience store, comprising of

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approximately 499 square feet of floor area, to be attached to the right side of the existing building; build a canopy above the existing gasoline service pumps; and install a five-foot-wide planting island along the northeastern and southern property lines which abut neighboring residences.

Over the course of hearings, the Board directed the applicant to prepare an automotive maneuvering plan which clarified the purpose of the existing and proposed number of curb cuts and their affects on the flow of traffic within and surrounding the subject Premises and submit plans which delineated existing and new construction as well as specified the types of material to be used for the proposed enlargement. Additionally, the Board questioned the applicant's decision to use the ten-foot planting area in the rear of the building as parking as it is abutting a residential use, visible from the residential use at the side lot line, promotes the use of that area for improper storage, and would block a suggested pathway to the toilets. Furthermore, the Board questioned the methodology the applicant used in its lumens' spread study which showed a spread greater than 0.0 over the shared residential lot line.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated August 2, 2022, 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, October 3, 2022.

467-58-BZ

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

SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board's Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.

PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures (the "Board's Rules") and an extension of term, pursuant to Z.R. § 11-411, for a variance previously granted by the Board, which permitted the operation of a Use Group ("UG") 16B automotive

service station and expired on December 14, 2019.

A public hearing was held on this application on November 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on March 14, 2022 and July 18, 2022, and then to decision on October 3, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the site and surrounding neighborhood. Community Board 7, Queens, recommends approval of this application with the following conditions:

1. Reduce glare and lighting at adjacent residential houses.
2. The addition of significant planting areas adjacent to houses and particularly at the southeast corner of the property. (Around the sign)
3. Provide clear and visible building address to be seen from Northern Blvd.
4. Provide safety bollards barriers at property line at northeast corner, separating lot from sidewalk.
5. Provide new parking and directional striping on asphalt that complies with DOB and BSA drawings and rules.

The Premises are located on the north side of Northern Boulevard, between 172nd Street and Utopia Parkway, located partially within an R3-2 zoning district, partially within an R4B zoning district, and partially within an R3X zoning district, in Queens. With approximately 196 feet of frontage along Northern Boulevard, 112 feet of depth, and 21,800 square feet of lot area, the Premises are occupied by a one-story, gasoline service station, accessory auto repair, and accessory convenience store.

The Board has exercised jurisdiction over the Premises since December 16, 1958, when, under the subject calendar number, the Board granted a variance, for a term of 15 years to expire on December 16, 1963, to permit the Premises be occupied as a gasoline service station and uses legally accessory, thereto, substantially as proposed and indicated on plans filed with the application, on condition that all buildings and uses now on the Premises be removed and the site leveled substantially as indicated on such plans; the accessory building be of the design, location, and arrangement indicated on such plans; the building be faced on all sides with face brick and have no cellar; there be no windows opening on the rear lot line; there be erected along the rear, where shown, a face brick wall to a total height of not less than 5'-6" with masonry terminal posts to the east, and similarly to the west; at the rear to the north of such wall there be a landscaped area, planted with suitable material and protected with a curbing eight inches in height, which be maintained by this owner; walls and planting protected by curbing be constructed as proposed and shown to the west and east; for a similar terms, parking may be extended where shown, along the line of 172nd Street; pumps be of an approved low type, erected not nearer than 15 feet to the street building line of Northern Boulevard; the number of gasoline storage tanks not exceed 12 550-gallon

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approved tanks; where not covered by accessory buildings and tanks, the Premises be paved with concrete and asphalt; sidewalks and curbing abutting the site be constructed or repaired to the satisfaction of the Borough President; the new curb cuts may be as shown, consisting of four 25 feet in width each to Northern Boulevard, one 30 feet in width to 172nd Street, and two of similar width to Utopia Parkway; such portable fire-fighting appliances be maintained as the Fire Commissioner direct; signs be restricted to permanent signs attached to the façade of the accessory building, facing Northern Boulevard and the illuminated globes of the pumps, excluding all roof signs, temporary signs and advertising devices, but permitting the erection within the building line of one post standard for supporting a sign, which may be illuminated, which may have two leaves, one at right angles to Northern Boulevard and one at right angles to Utopia Parkway, advertising only the brand of gasoline on sale; such signs extend not more than four feet beyond the building line; for a similar term, there may be minor repairs with hand tools only, for adjustments maintained solely within the accessory building; in all other respects, the Premises comply with all laws, rules, and regulations applicable thereto, other than as modified by resolution adopted under BSA Cal. No. 468-58-A; all permits required be obtained and all work completed within the requirements of the Zoning Resolution.

On December 15, 1968, under BSA Cal. No. 468-58-A, the Board granted a waiver of General City Law ("GCL") § 35 to permit that portion of 172nd Street to be occupied as part of the gasoline service station provided no building are erected thereon, on condition that such space is used only as an apron for entering and leaving the gasoline station; in the event this portion of the Premises is acquired by the City for street widening, no claim be made except for the land so taken, compensation therefore be as determined by the Court.

On May 21, 1974, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term of the variance for ten years, to expire on May 21, 1984, on condition that no trucks be parked or stored on the Premises; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On February 13, 1985, under the subject calendar number, the Board further amended the resolution to extend the term of the grant for five years from May 21, 1984 to May 21, 1989, on condition that all conditions enumerated in the affidavit from the operator be complied with; 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; a new certificate of occupancy be obtained within one year, by February 13, 1986.

On May 5, 1987, 1980, under the subject calendar number, the Board further amended the resolution, in conjunction with a change to self-service pumps for the sale of gasoline in accordance with the conditions of the resolution granted under BSA Cal. No. 1107-86-A to permit

the erection of a new 30'-4" x 63'-0" steel canopy over two new gasoline islands with new self-serve pumps and to alter the existing office and sales area of the accessory building to accommodate an attendant's booth; the Premises conform to revised drawings of proposed conditions; all the conditions enumerated in the affidavit from the operator be complied with; there be no parking of vehicles on the sidewalk or in such a manner to obstruct pedestrian or vehicular traffic; substantial construction be completed within one year, by May 5, 1988; and other than as amended the resolution be complied with in all respects.

On July 18, 1990, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years from May 21, 1989 to May 21, 1999, 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 in one year, by July 18, 1991.

On August 19, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to extend the term of the variance for ten years from December 4, 1999 to expire on December 4, 2009, and to grant a period of one year to obtain a certificate of occupancy, to expire on August 19, 2009, on condition that all use and operations substantially conform to plans filed with the application; the term of the grant expire on December 4, 2009; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained by August 19, 2009; landscaping be maintained as shown on BSA-approved plans; the site be well-maintained; all conditions from 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.

On August 19, 2008, 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 ten years from December 4, 1999 to expire on December 4, 2009 and grant a period of one year to obtain a certificate of occupancy, to expire on August 19, 2009, on condition that all use and operations substantially conform to plans filed with the application; the term of the grant expire on December 4, 2009; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained by August 19, 2009; the landscaping be maintained as shown on the BSA-approved plans; the site be well-maintained; 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 other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On November 24, 2009, under the subject calendar

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number, the Board further amended the resolution to extend the term of the variance for ten years from December 4, 2009, to expire on December 4, 2019, on condition that all use and operations substantially conform to plans filed with the application, on condition that the term of the grant expire on December 4, 2019; landscaping be maintained as shown on the BSA-approved plans; there be no exterior storage on the site; the gate for the garbage enclosure be maintained and remain closed except for limited access for collection and removal; the above appear on the certificate of occupancy; a new certificate of be obtained by May 24, 2010; all conditions from 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. 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 § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application. Pursuant to the Board's Rules, the applicant demonstrates continuous use of the Premises from the expiration of the term through the filing of this application with supporting documentation, including various delivery receipts for products delivered to the site over a period of time.

The applicant represents that the proposed extension of term of the Premises would have no impact on the character of the area in which it is located, as the Premises has been a gasoline station with accessory uses for more than seven decades in a mixed-use neighborhood. Furthermore, the applicant states that Northern Boulevard is a major street with numerous automotive uses in the area. In this instant application, the applicant purposes to incorporate two-double sided gasoline and diesel dispensers in the fueling operation and relocate the existing air tower and car vacuum from northwest corner of the site to southeast quadrant along the Northern Boulevard and increase the number of each from one to two. Furthermore, the applicant states that the hours of operation for the three uses on the site are as follows: Gasoline service station and accessory convenience: 7 days a week, 24 hours a day; and accessory auto repair: 8 a.m. – 6 p.m., Monday to Saturday, closed on Sunday.

Over the course of hearings, the Board expressed concerns about maintenance at the site, including the landscaping, condition of the parking area, light spread onto the adjacent residential properties, and maneuverability of vehicles using the proposed additional gasoline and diesel dispensers. In response, the applicant submitted plans to show that how it proposed to mitigate on-site congestion caused by the dispensers. The plans demonstrate that trucks entering from Utopia Parkway would be able to exist the site onto 172nd Street; truck fueling at the diesel dispenser closer to Northern Boulevard could either exit onto 172nd

Street or onto Northern Boulevard; and a 24-foot turning radius, which would permit a 20'-2" length truck able to enter the site from Northern Boulevard and exit onto Utopia Parkway. Moreover, the applicant submitted images of the conditions of at the site including installed shield to direct light spread down and away from residential properties and resurfaced asphalt within the parking area.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans 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 December 16, 1958, as amended through November 24, 2009, so that a s amended this portion of the resolution shall read: "to extend the term of the variance for ten years from the date of expiration of the prior grant, to expire on December 14, 2029, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Board Approved: October 3, 2022 – Twelve (12) sheets'; and *on further condition*;

THAT the term of the grant shall be for ten years, to expire on December 14, 2029;

THAT improvements, including, but not limited to, landscaping, trash enclosure, wall repair, asphalt repair, restriping, parking, and directional signs shall be completed;

THAT improvements to the site shall be in compliance with the BSA-approved plans;

THAT all lighting sources located adjacent to residential uses shall be shielded from direct view and minimize any adverse effects on surrounding residences;

THAT should neighbors raise any issues regarding lighting spread, the applicant shall respond immediately;

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. 467-58-BZ'), shall be obtained within 24 months, by October 3, 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, October 3, 2022.

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66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corp., owner.

SUBJECT – Application May 3, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 1, 2020; Waiver of the Board’s Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4
Negative:.....0

Abstain: Commissioner Yoon.....1

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, under Z.R. § 11-411, which permitted the use of the Premises as a gasoline service station with accessory convenience store and expired on October 1, 2020.

A public hearing was held on this application on March 28, 2022, after due notice by publication in *The City Record*, with a continued hearing on August 8, 2022, and then to decision on October 3, 2022. Commissioner Sheta and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 1, Queens, recommends approval of this application subject to the following conditions: there be no sales of cars on the Premises; the sidewalks and curbs be repaired; the Premises be kept free of debris; the landscaping be in accordance with the approved BSA plans and be replaced and maintained as necessary; the dumpster be screened with 100% opaque screening; the fencing on the east side of the property have 100% screening; these stipulations be noted on the new certificate of occupancy; and, all lighting be directed away from adjacent residential properties.

The Premises are located on the northeast corner of Astoria Boulevard and 43rd Street, within an R5 zoning district, in Queens. With approximately 138 feet of frontage along Astoria Boulevard, 117 feet of frontage along 43rd Street, and 10,745 square feet of lot area, the Premises are occupied by an existing gasoline service station with accessory convenience store (1,700 square feet of floor area with 730 square feet of sales area).

The Board has exercised jurisdiction over the Premises since April 7, 1959, when, under the BSA Cal. No. 525-58-BZ, the Board granted a variance to permit the construction of a gasoline service station at the Premises. The grant was subsequently extended at various times under BSA Cal. No. 525-58-BZ, but ultimately expired.

On October 1, 1991, under the subject calendar number, the Board permitted the re-establishment of the variance, pursuant to Z.R. § 11-411, for a term of ten years,

to expire on October 1, 2001.

On November 14, 2000, under the subject calendar number, the Board granted an extension of the term of the variance, to expire on October 1, 2010, and permitted the renovation of the existing accessory building to include a convenience store and the construction of a new metal canopy.

On March 17, 2009, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy, to expire October 25, 2009.

Most recently, on January 25, 2011, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on October 1, 2020, on condition that the use substantially conform to drawings filed with the application; the term of the grant expire on October 1, 2020; all signage comply with C1 zoning regulations; the conditions appear on the certificate of occupancy; all conditions from 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 variance 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 proposes the continued operation of the Premises as a gasoline service station with an accessory convenience store with 24-hour operation and states refuse at the Premises is stored in a fenced enclosure along the eastern property line and is removed twice weekly. The applicant maintains screening surrounding the Premises with a concrete wall and fencing at the shared property lines, as well as landscaping.

Over the course of hearings, the Board questioned whether the light levels at the Premises adversely affect nearby properties, and also requested detail regarding the trash enclosure and landscaping.

In response, the applicant revised the plans to demonstrate light shields on light fixtures located at the eastern shared property line, supplemented the information contained in the landscaping plan, and provided details for the trash enclosure.

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 October 1, 1991, as amended through January 25, 2011, so that as

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amended this portion of the resolution shall read: “to permit the operation of the Premises as a gasoline service station with accessory uses for a term of ten years, to expire on October 1, 2030, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked ‘Board Approved October 3, 2022’—Twelve (12) sheets; and *on further condition*:

THAT the term of the variance shall expire October 1, 2030;

THAT there shall be no sales of cars at the Premises;

That the Premises shall be free from debris and graffiti at all times;

THAT landscaping shall be maintained as per the Board-approved plans, replaced as necessary to be maintained in first-rate condition at all times;

THAT complaints raised by nearby neighbors regarding light spillage from the Premises shall be addressed and resolved forthright;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 66-90-BZ”), shall be obtained within 18 months, by April 3, 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, October 3, 2022.

36-11-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 270 Greenwich Street Associates, owner for Soul Cycle Tribeca lessee.

SUBJECT – Application January 13, 2021 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (SoulCycle) which expired on January 15, 2020, Waiver of the Board’s Rules of Practice and Procedures. C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street, Block 142, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and to extend the term of a previously approved special permit, pursuant to Z.R. § 73-36, on a site located within a C6-3A zoning district, which permitted the operation of a physical culture establishment and expired on January 15, 2020.

A public hearing was held on this application on October 18, 2021, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located at the northeast corner of the intersection of Greenwich Street and Warren Street, within a C6-4 zoning district, in Manhattan. With approximately 206 feet of frontage along Greenwich Street, 461 feet of frontage on Warren Street, 182 feet of frontage on West Street, and 90,565 square feet of lot area, the Premises are occupied by an existing 32-story, plus cellar, mixed-use commercial and residential building.

The Board has exercised jurisdiction over the Premises since July 19, 2011, when, the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the legalization of a physical culture establishment at the first floor and first floor mezzanine of a 32-story, mixed-use commercial and residential building, contrary to Z.R. § 32-10, on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on January 15, 2020; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the above conditions appear on the certificate of occupancy; fire safety measures be installed and/or maintained as shown on the Board-approved plans; this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the 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.

By correspondence dated October 18, 2021, the Fire Department states that the Fire Department’s Bureau of Fire Prevention has been conducting annual inspections of these Premises and has found no violation and permits are current. Based upon the foregoing, the Fire 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.

During the course of hearings, on December 9, 2021, the City Council adopted the Health and Fitness Text Amendment which was subject to a four-month challenge period that ended on April 9, 2022. The Health and Fitness Text Amendment categorizes all facilities dedicated to physical fitness and health, limited to 10,000 square feet of floor area per establishment, as Use Group 6 and Use Group

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14. This categorization includes gyms, spas, and other facilities with activities designed to promote physical fitness. Through this framework, the Use Group 6 use would be permitted as-of-right in C1, C2, C4, C5, C6 and C8 zoning districts and in M1, M2 and M3 zoning districts, and the Use Group 14 use would be permitted in C2, C3, C7 and C8 zoning districts. The action would categorize all facilities dedicated to physical fitness and health, with no limitation of floor area per establishment, as Use Group 9. This categorization also includes gyms, spas, and other facilities with activities designed to promote physical fitness. These uses would be permitted as-of-right in C2, C4, C5, C6, and C8 zoning districts; M1, M2, and M3 zoning districts; and high-density C1 zoning districts, such as C1-8, C1-9, and C1 overlays mapped with R9 or R10 zoning districts. As of April 9, 2022, the Board no longer retains jurisdiction over “physical culture establishment” special permits granted pursuant to Z.R. § 73-36 and cannot consider new or modified approvals under that section.

As such, by correspondence, dated July 22, 2022, 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, October 3, 2022.

49-11-BZ

APPLICANT – Akerman LLP, for A&G Real Estate, LLC, owner Barry’s Bootcamp NYC, LLC, lessee.

SUBJECT – Application October 26, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Barry’s Bootcamp Fitness Center) located on the cellar and first floor of an existing building which is set to expire on July 12, 2021. C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a previously approved special permit, pursuant to Z.R. § 73-36, on a site located within a C6-3A zoning district, which permitted the operation of a physical culture establishment (“PCE”) and expired on July 12, 2021.

A public hearing was held on this application on November 15, 2021, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located on the north side of West 20th Street, between Sixth Avenue and Seventh Avenue, within a C6-3A zoning district, in Manhattan. With

approximately 65 feet of frontage on West 20th Street, 92 feet of depth, and 5,980 square feet of lot area, the Premises are occupied by an existing six-story, plus cellar, mixed-use commercial and residential building.

The Board has exercised jurisdiction over the Premises since July 12, 2011, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize, within a C6-3A zoning district, the operation of a PCE at the first floor and cellar of a six-story commercial building, contrary to Z.R. § 32-10, on condition that the grant expire on July 12, 2021; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; that 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 Department of Buildings (“DOB”)/other jurisdiction objection(s); the approved plans be considered approved only for the portion related to the specific relief granted; and DOB ensure compliance with all of the applicable provision of the Zoning 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 June 17, 2014, under the subject calendar number, the Board amended the resolution to legalize the enlargement of the floor area of the PCE and the extension of this enlarged portion into other portions of the ground floor and cellar of the building 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); 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.

During the course of hearings, on December 9, 2021, the City Council adopted the Health and Fitness Text Amendment which was subject to a four-month challenge period that ended on April 9, 2022. The Health and Fitness Text Amendment categorizes all facilities dedicated to physical fitness and health, limited to 10,000 square feet of floor area per establishment, as Use Group 6 and Use Group 14. This categorization includes gyms, spas, and other facilities with activities designed to promote physical fitness. Through this framework, the Use Group 6 use would be permitted as-of-right in C1, C2, C4, C5, C6 and C8 zoning districts and in M1, M2 and M3 zoning districts, and the Use Group 14 use would be permitted in C2, C3, C7 and C8 zoning districts. The action would categorize all facilities dedicated to physical fitness and health, with no limitation of floor area per establishment, as Use Group 9. This categorization also includes gyms, spas, and other facilities with activities designed to promote physical fitness. These uses would be permitted as-of-right in C2, C4, C5, C6, and C8 zoning districts; M1, M2, and M3 zoning districts; and high-density C1 zoning districts, such

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as C1-8, C1-9, and C1 overlays mapped with R9 or R10 zoning districts. As of April 9, 2022, the Board no longer retains jurisdiction over “physical culture establishment” special permits granted pursuant to Z.R. § 73-36 and cannot consider new or modified approvals under that section.

By letter dated September 7, 2022, 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, October 3, 2022.

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. C4-2A/R5D zoning district.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated November 19, 2020, acting on Alteration Type 1 Application No. 421318586, reads in pertinent part:

Relevant objection code ZR 32-31

1. Proposed enlargement of the Physical Culture Establishment on the first floor does not conform to the BSA approval under calendar No. 2017-286-BZ and must therefore be referred back to the Board of Standards of Appeals.

This is an application to permit the enlargement of a physical culture establishment, pursuant to Z.R. § 77-11, under a previously approved special permit, pursuant to Z.R. § 73-36, on a site located within a C4-2A (R5D) zoning district, which permitted the operation of a physical culture establishment (“PCE”).

A public hearing was held on this application on September 23, 2021, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located on the west side of 31st Street, between 23rd Avenue and Ditmars Boulevard, within a C4-2A (R5D) zoning district, in Queens. With approximately 125 feet of frontage along 31st Street and an irregular depth ranging from 145 feet of depth along the

northern lot line and 175 feet of depth along the southern lot line, the Premises comprise 20,378 square feet of lot area and is currently occupied by an existing three-story, plus cellar, commercial building.

The Board has exercised jurisdiction over the Premises since October 11, 2018, when, under the subject calendar number, the Board granted, pursuant to Z.R. § 73-36, a special permit legalizing, within a C4-2A (R5D) zoning district, the operation of a PCE on a portion of the first floor and cellar of a three-story commercial building, contrary to Z.R. § 32-10, on condition that the grant be limited to a term of ten years, to expire on October 11, 2028; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; minimum three-foot-wide exit pathways be provided leading to the required exits and that pathways be maintained unobstructed, including from any gymnasium equipment; an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—be installed in the entire PCE space and the PCE be full sprinklered, as indicated on the Board-approved drawings; sound attenuation be installed in the PCE, as indicated on the Board-approved drawings; Local Law 58/87 be complied with as approved by DOB; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by October 11, 2022; the approval be limited to the relief granted by the Board in response to objections cited and filed by DOB; approved drawings be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

During the course of hearings, on December 9, 2021, the City Council adopted the Health and Fitness Text Amendment which was subject to a four-month challenge period that ended on April 9, 2022. The Health and Fitness Text Amendment categorizes all facilities dedicated to physical fitness and health, limited to 10,000 square feet of floor area per establishment, as Use Group 6 and Use Group 14. This categorization includes gyms, spas, and other facilities with activities designed to promote physical fitness. Through this framework, the Use Group 6 use would be permitted as-of-right in C1, C2, C4, C5, C6 and C8 zoning districts and in M1, M2 and M3 zoning districts, and the Use Group 14 use would be permitted in C2, C3, C7 and C8 zoning districts. The action would categorize all facilities dedicated to physical fitness and health, with no limitation of floor area per establishment, as Use Group 9. This categorization also includes gyms, spas, and other facilities with activities designed to promote physical fitness. These uses would be permitted as-of-right in C2, C4, C5, C6, and C8 zoning districts; M1, M2, and M3 zoning districts; and high-density C1 zoning districts, such

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as C1-8, C1-9, and C1 overlays mapped with R9 or R10 zoning districts. As of April 9, 2022, the Board no longer retains jurisdiction over “physical culture establishment” special permits granted pursuant to Z.R. § 73-36 and cannot consider new or modified approvals under that section.

As such, by correspondence, dated April 19, 2022, 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, October 3, 2022.

2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27th Street Property Investors IV, LLC, owner; Equinox West 27th 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 27th Street, Block 829, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 12, 2019, acting on Alteration Type 1 Application No. 121206596, reads in pertinent part:

ZR 42-10

The proposed physical culture establishment in an M1-6 zoning district is contrary to zoning use provisions and requires special permit from the Board of Standards and Appeals.

This is an application for a special permit, pursuant to Z.R. § 73-36, to permit, for a term of ten years, on a site located within an M1-6 zoning district and within the Madison Square North Historic District, the operation of a physical culture establishment, contrary to Z.R. § 42-10.

A public hearing was held on this application on April 27, 2021, after due notice by publication in *The City Record*, and then to decision on October 3, 2022. Community Board 5, Manhattan waived its recommendation of this application.

The Premises are located on the north side of West 27th Street, within an M1-6 zoning district, in Manhattan. With approximately 100 feet of frontage along 27th Street, 100 feet of depth, and 9,875 square feet of lot area, the Premises are occupied by an existing 12-story, plus cellar, commercial building.

By correspondence dated April 27, 2021, the Fire Department states that the Fire Department’s Bureau of Fire

Prevention has reviewed the subject application and confirmed that the Premises are protected by a fire suppression system (sprinkler and standpipe) and fire alarm system, the systems have been inspected, and permits for the systems are current. Based upon the foregoing, the Fire 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.

During the course of hearings, on December 9, 2021, the City Council adopted the Health and Fitness Text Amendment which was subject to a four-month challenge period that ended on April 9, 2022. The Health and Fitness Text Amendment categorizes all facilities dedicated to physical fitness and health, limited to 10,000 square feet of floor area per establishment, as Use Group 6 and Use Group 14. This categorization includes gyms, spas, and other facilities with activities designed to promote physical fitness. Through this framework, the Use Group 6 use would be permitted as-of-right in C1, C2, C4, C5, C6 and C8 zoning districts and in M1, M2 and M3 zoning districts, and the Use Group 14 use would be permitted in C2, C3, C7 and C8 zoning districts. The action would categorize all facilities dedicated to physical fitness and health, with no limitation of floor area per establishment, as Use Group 9. This categorization also includes gyms, spas, and other facilities with activities designed to promote physical fitness. These uses would be permitted as-of-right in C2, C4, C5, C6, and C8 zoning districts; M1, M2, and M3 zoning districts; and high-density C1 zoning districts, such as C1-8, C1-9, and C1 overlays mapped with R9 or R10 zoning districts. As of April 9, 2022, the Board no longer retains jurisdiction over “physical culture establishment” special permits granted pursuant to Z.R. § 73-36 and cannot consider new or modified approvals under that section.

As such, by correspondence, dated July 22, 2022, 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, October 3, 2022.

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – 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.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 2, 2020, acting on Alteration Type 1 Application No. 140934979, reads in pertinent part:

Proposed physical culture establishment in a M1-6 zoning district is not permitted as of right and requires a special permit from the New York City Board of Standards and Appeals (BSA) per ZR 42-31 and ZR 73-36.

This is an application for a special permit, pursuant to Z.R. § 73-36, to legalize, on a site located within an M1-6 zoning district, the operation of an existing physical culture establishment (“PCE”), contrary to Z.R. § 42-10.

A public hearing was held on this application on April 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 25, 2021, and then to decision on October 3, 2022. Community Board 5, Manhattan, waived recommendation of this application. The Board received one letter of support for this application.

The Premises are located on the west side of 7th Avenue, between West 35th Street and West 36th Street, within an M1-6 zoning district and within the Special Garment Center District, in Manhattan. With approximately 37 feet of frontage along 7th Avenue, 63 feet of depth, and 2,257 square feet of lot area, the Premises are occupied by an existing six-story, plus cellar, commercial building.

By correspondence, dated April 7, 2021, the Fire Department states that a member of the Bureau of Fire Prevention conducted an inspection at the Premises and discovered that the rear fire escape is in bad condition with risers broken, railings missing, and the exit door lacking any hardware. Additional Fire Department personnel were subsequently dispatched to the location, and, upon further inspections, the Battalion Chief directed a violation order to be issued and a vacate order was issued by DOB for the entire building. Based upon the foregoing reasons, the Fire Department objects to the above referenced application.

By correspondence, dated May 25, 2021, the Fire Department states that plans, submitted on March 26, 2021, do not show a second-floor plan for the egress arrangement. At the second floor, the fire escape terminates, and the path of egress returns into the building and then down the existing stair. At the Fire Department’s last inspection, the area was obstructed with cleaning supplies and miscellaneous items. The Fire Department requests the Board to direct the applicant to provide a plan of the second floor with a note that the exit corridor shall be maintained clean and unobstructed at all times. In addition, a vacate order was issued by DOB at the request of the Fire Department, and the Fire Department requests that plans for the restoration or replacement of the rear fire escape be provided to the Board and made part of the record for this application. Based upon the foregoing, the Fire Department objects to the application.

During the course of hearings, on December 9, 2021, the City Council adopted the Health and Fitness Text Amendment which was subject to a four-month challenge period that ended on April 9, 2022. The Health and Fitness Text Amendment categorizes all facilities dedicated to physical fitness and health, limited to 10,000 square feet of floor area per establishment, as Use Group 6 and Use Group 14. This categorization includes gyms, spas, and other facilities with activities designed to promote physical fitness. Through this framework, the Use Group 6 use would be permitted as-of-right in C1, C2, C4, C5, C6 and C8 zoning districts and in M1, M2 and M3 zoning districts, and the Use Group 14 use would be permitted in C2, C3, C7 and C8 zoning districts. The action would categorize all facilities dedicated to physical fitness and health, with no limitation of floor area per establishment, as Use Group 9. This categorization also includes gyms, spas, and other facilities with activities designed to promote physical fitness. These uses would be permitted as-of-right in C2, C4, C5, C6, and C8 zoning districts; M1, M2, and M3 zoning districts; and high-density C1 zoning districts, such as C1-8, C1-9, and C1 overlays mapped with R9 or R10 zoning districts. As of April 9, 2022, the Board no longer retains jurisdiction over “physical culture establishment” special permits granted pursuant to Z.R. § 73-36 and cannot consider new or modified approvals under that section.

As such, by correspondence, dated April 14, 2022, 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, October 3, 2022.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

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519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP for BP Products North America, Inc. owner.

SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board’s Rules of Practice and Procedures. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for adjourned hearing.

779-57-BZ

APPLICANT – Nasir J. Khanzada, for Louis D. Katz, owner.

SUBJECT – Application July 13, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 11, 2013; Amendment to permit the legalization of the conversion of automotive repair bays to auto alarm and audio system installation. Waiver of the Board’s Rules of Practice and Procedures. C2-4/R6A zoning district.

PREMISES AFFECTED – 137-25 Jamaica Avenue, Block 9618, Lot 30, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for postponed hearing.

348-75-BZ

APPLICANT – Eric Palatnik, P.C., for Moises A. Villadelgado, owner.

SUBJECT – Application March 11, 2022 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement of a then existing two-story building occupied as an animal hospital with an accessory caretaker’s apartment which expires on April 3, 2022. R3-2 and R2 zoning district.

PREMISES AFFECTED – 1050 Forest Avenue, Block 315, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

617-80-BZ

APPLICANT – Eric Palatnik, P.C., for J & Simcha, Inc., owner.

SUBJECT – Application August 25, 2020 – Extension of Term of a previously granted Variance (§72-21) of a UG 9 catering establishment which expires on July 7, 2020. M1-1 zoning district.

PREMISES AFFECTED – 770/780 McDonald Avenue, Block 5394, Lot(s) 1 & 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

129-97-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application November 8, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on November 4, 2018; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-65 Cross Island Parkway, Block 4697, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

72-11-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.

SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for adjourned hearing.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Top Development Corporation, owner.

SUBJECT – Application June 6, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a three-story community facility (house of worship UG 4) which expired on May 6, 2022. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

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216-13-BZIV

APPLICANT – Rampulla Associates Architects, LLP, for Barclay Boardwalk, LLC, owner.

SUBJECT – Application June 21, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a one (1) story Eating & Drinking Establishment (UG 6) which expired on June 24, 2022. R3X Special Richmond District.

PREMISES AFFECTED – 750 Barclay Avenue, Block 6397, Lot(s) 7, 9, 12, 18 (tent.7), Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

102-15-A

APPLICANT – Eric Palatnik, P.C., for 1088RA10309, LLC, owner.

SUBJECT – Application July 6, 2022 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a previously approved waiver of General City Law §35 and ZR §107-461 pursuant to ZR §72-01(g) which expired on August 21, 2022. R3-2 Special Richmond Purpose District.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

2016-4230-BZII

APPLICANT – Eric Palatnik, P.C., for Muslim American Society of Upper New York, owner.

SUBJECT – Application May 11, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a House of Worship (UG 4A) which expired on April 18, 2022. C8-1 zoning district.

PREMISES AFFECTED – 1912 Amethyst Street, Block 4254, Lot 11, Borough of Bronx.

COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to

November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2017-299-BZ

APPLICANT – Duane Morris LLP, for Douglaston Shopping Center, LLC, owner.

SUBJECT – Application June 8, 2022 – Extension of Time to complete construction and obtain a Certificate of Occupancy of a previously approved variance which permitted the increase in the degree of nonconformance of an existing nonconforming shopping center and a reduction in parking, which expired on May 8, 2022. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 17-18, 2022, at 10 A.M., for decision, hearing closed.

2019-58-BZII

APPLICANT – Law Office of Jay Goldstein, for JSB Realty No. 2, LLC, owner; CEC Entertainment, LLC d/b/a Chuck E. Cheese, lessee.

SUBJECT – Application April 5, 2022 – Extension of Term of a previously approved Special Permit (§73-244) permitting the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (Chuck E. Cheese's) which expires on July 23, 2022. C2-2 zoning district.

PREMISES AFFECTED – 133-35 79th Street, Block 11359, Lot 1, Borough of Queens.

COMMUNITY BOARD #10Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

2021-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Block 7206 Industrial LLC, owner.

SUBJECT – Application March 16, 2021 – Proposed development of a two-story office and warehouse building (UG 6 & UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 500 Industrial Loop, Block 7206, Lot 66, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2021-57-A

APPLICANT – Eric Palatnik, P.C., for Raphael Holguin, owner.

SUBJECT – Application August 24, 2021 – Proposed construction of a two-story commercial (UG 6) building located partially in the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1900 Hylan Boulevard, Block 3666, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for continued hearing.

2022-19-A

APPLICANT – Rothkrug Rothkrug & Spector, for FS Storer LLC, owner.

SUBJECT – Application April 4, 2022 – Proposed development of a two-story warehouse and office building not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special Richmond District.

PREMISES AFFECTED – 121 Storer Avenue, Block 7311, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2022-28-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD, Diane Rivela, Pres., owner.

SUBJECT – Application May 19, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a

zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 15 Bedell Street, Block 7702, Lot 134, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for postponed hearing.

2022-29-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD, Diane Rivela, Pres., owner.

SUBJECT – Application May 19, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 17 Bedell Street, Block 7702, Lot 135, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for postponed hearing.

2022-30-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD, Diane Rivela, Pres., owner.

SUBJECT – Application May 19, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 19 Bedell Street, Block 7702, Lot 136, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for postponed hearing.

ZONING CALENDAR

ORRECTION: This resolution adopted on October 3, 2022, under Calendar No. 2020-64-BZ, is hereby corrected to read as follows:

2020-64-BZ

CEQR #21-BSA-007Q

APPLICANT – Jay Goldstein, Esq., for Congregation Ohr Eliyahu Inc., owner.

SUBJECT – Application August 13, 2020 – 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.

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PREMISES AFFECTED – 2020-64-BZ, 85-94 66th Road, Block 3144, Lot 42 Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 21, 2020, acting on Alteration Type 1 Application No. 421729801, reads in pertinent part:

Respectfully requesting DOB zoning “Denial for Appeal to BSA” for the following zoning objection:

1. Proposed plans are contrary to ZR 24-11 in that the proposed lot coverage is greater than permitted.
2. The proposed plans are contrary to ZR 24-34 in that proposed front yard setback is less than the required 15’.
3. The proposed plans are contrary to ZR 24-35 in that the proposed side yard setback is less than the minimum required 8’.
4. The proposed plans are contrary to ZR 24-36 in that the proposed rear yard setback is less than the minimum required 30’.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an R4 zoning district, the development of a two-story, plus cellar, Use Group (“UG”) 4 house of worship which does not comply with zoning requirements for lot coverage (Z.R. § 24-11), front yard (Z.R. § 24-34), side yards (Z.R. § 24-35), and rear yard (Z.R. § 24-36).

A public hearing was held on this application on May 10, 2022, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2022, and then to decision on October 3, 2022. Community Board 6, Queens, recommends approval of this application with the following conditions:

- Provide for additional sound attenuation
- Provide for light pollution attenuation
- Provide for utility reduction and energy efficiency considerations
- Provide for enhanced stormwater reduction strategies
- Maximize vegetation alongside public right of way
- Provide community outreach and point of contact for supervision of construction operations.

Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

The Board received one form letter of support for this application. Additionally, the Board received a petition with 377 signatures from neighbors and almost 200 letters

objecting to this application, citing concerns over increased traffic and congestion; increase in garbage and trash; safety; loss of green space; the height, size, and use of the proposed building; noise from the proposed construction and use; lack of parking; and cohesion of the proposed design to neighborhood character.

I.

The Premises are located south side of 66th Road, between Fitchett Street and Alderton Street, within an R4 zoning district, in Queens. With approximately 40 feet of frontage along 66th Road, 100 feet of depth, and 3,916 square feet of lot area, the Premises are currently occupied by an existing one-and-a-half story, single-family residence.

II.

Originally, the applicant proposed to construct a three-story, plus cellar, community facility building on the Premises, to be used as a house of worship and an accessory apartment for a rabbi. The applicant represented that the proposed building would provide one 9’ side yard along the western lot line; no side yard at the first and second floor and a 5’ side yard at the third floor along the eastern lot line; a front yard of 10’ along 66th Road; a maximum lot coverage of 69%; and no rear yard at the first and second floor and a compliant 30’ rear yard at the third floor. The applicant further stated that the proposed building would be outfitted with both a fire alarm system and a fire sprinkler system, a compliant floor area, FAR, and height.

In response to community concerns and the Board’s comments, the applicant amended its application and now proposes to construct a two story, plus cellar, building that would have a lot coverage of 69%; one six-foot side yard along the western lot line; one three-foot side yard along the eastern lot line; a front yard of 10 feet along 66th Road, and no proposed rear yard. The applicant describes that the cellar level would primarily house a multipurpose room for 105 people, to be used for special occasions, as well as youth programming for children between the ages of five and ten; a warming kitchen; accessible bathroom facilities; storage; a refrigerated refuse room; a lobby; a sprinkler room; and an ADA-accessible elevator with access to both the first and second floors. The applicant represents that the first floor would contain a 142-person sanctuary for men; an entrance lobby; accessible bathroom facilities; and a coat room. The applicant states the second floor would be partially open to the sanctuary below; 116 seats for the women; the Rabbi’s office; a lobby area; accessible bathroom facilities; and a coat room. Furthermore, the applicant states that the proposed building would be outfitted with both a fire alarm system and a fire sprinkler system,

In the subject R4 zoning district, the Zoning Resolution permits a maximum lot coverage of 55%; two side yards with minimum depths of 8’ each; a front yard with a minimum depth 15’; and a rear yard with a minimum depth of 30’ for a community facility use, *see* Z.R. §§ 24-11, 24-34, 24-35, and 24-36. Additionally, the applicant represents that as per Z.R. § 25-31, the parking requirement

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for the proposed use is one space for every 15 persons, determined by the rated capacity of the largest room of assembly. In the case of the instant application, the rated capacity of the main sanctuary, the proposed building's largest room of assembly, is 142, which would necessitate nine parking spaces. Z.R. § 25-33 permits the waiver of up to 10 parking spaces in an R4 zoning district, and as such, the applicant represents that it would be exempt from providing any parking. Accordingly, the applicant seeks the relief requested 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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its programmatic needs and the restrictive bulk regulations—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 represents that its programmatic needs include (1) sufficient space for the Congregation's prayer services; (2) space for lectures, large group study and small group study; (3) a rabbi's office; and (4) a multipurpose room to be used as a space for the younger children to play during services and for special occasions.

Furthermore, the applicant notes that strict adherence to the underlying bulk regulations would not allow it to maximize the permitted bulk to construct a usable building. In support of this contention, the applicant submitted as-of-right plans that demonstrate that adherence to the underlying bulk regulation would only permit the construction of structure approximately 24' in width; 3,695.8 square feet of floor area (0.94 FAR); and with a footprint of 1,281.3 square feet. The plans further illustrate that after stair, elevator, and bathroom deductions, the proposed building would be left with minimal floor area for the multipurpose area, main sanctuary, and women's section. The applicant represents that compliance with underlying zoning regulations would not permit the usable development of the Premises or meet its programmatic needs unless a variance were 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a not-for-profit religious institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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 points out that the proposed use in the subject R4 zoning district is as of right and the house of worship is currently in existence in the area. The applicant describes the operation at the site in that during the week, the use of the proposed synagogue would primarily be limited to the early morning and late afternoon/early evening, at which times only 20-30 people would attend services and lectures. Furthermore, the applicant submitted a transportation analysis which documents that because many current and future members of the house of worship reside within walking distance of the proposed synagogue, it is anticipated that roughly half of these congregants would walk to the Premises during the week. The applicant further represented that on its busy day, Sabbath Saturday, all congregants would walk to services and lectures as it is an Orthodox congregation, and driving is prohibited on that day. The applicant concluded that given the very limited number of cars that the proposed synagogue would add to the surrounding roads, there would be no need for additional parking in the vicinity. The applicant also noted that there are no crash fatalities recorded for the Premises (or the immediately surrounding area), nor are they considered to be high-crash areas. Additionally, the applicant concluded that as a result of the close proximity of the proposed building to the congregants' homes, any increase in pedestrian traffic would be of short duration and would not create any significant disruptions to the neighborhood.

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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, which have limited the applicant's ability to meet its programmatic needs. In support of this contention, the applicant submitted the full ownership history of subject site, including deeds and a chain of title for the Premises (Lot 42), as well as the immediately adjoining lots (4, 41, 44, 45, 46 and 47) to assert that the subject Premises were never in common ownership with any of the neighboring lots. 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 notes that the variance request is the minimum necessary to develop a community facility at the Premises. The applicant submits that the proposed building is designed specifically to achieve the applicant's

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programmatic needs. The applicant posits that although the proposed use is as of right, it could not achieve its needs if forced to comply strictly with the underlying bulk regulations. 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.

At hearing and in response to community concerns, the Board raised concerns regarding the scope of the proposed project, landscaping, increased traffic, congestion, and noise. In response, the applicant submitted a revised plan reducing the number of proposed stories from three to two, reducing the height of the parapet, eliminating the proposed accessory use, and adding noise attenuation measures. Additionally, the applicant added a two-foot-wide landscaping strip along the western lot line to address concerns about loss of landscaping and to input additional noise attenuation measures. Furthermore, the applicant provided a supplemental transportation analysis provided to address community concerns over traffic, congestion, and safety. Moreover, in response to the Community Board's concerns about the efficiency and sustainability of the proposed construction, the Board notes that the NYC Building Code, to which the applicant has to adhere, already has measures in place to address these issues.

V.

By correspondence dated July 19, 2022, Fire Department states the Fire Department of the City of New York objects to the revised plans filed showing a parapet height over seven feet. As per Section 504.4.1.7, Rooftop access in the Fire Code:

The rooftop parapet or other perimeter railing or barrier shall be designed to facilitate the safe dismounting of a firefighter from an aerial ladder. Any such parapet, railing or barrier on a building constructed after the effective date of this section or installed pursuant to a work permit issued by the Department of Buildings after such date shall be of substantial construction capable of supporting a minimum of 350 pounds (159 kg) and shall be designed with a level service at least five inches in width (127 mm) so as to allow a firefighter to safely step on it, as prescribed by the Department, or other approved design. Where the height of rooftop parapet, railing or other enclosure is more than 48 inches (1,219 mm), an approved landing platform and steps or ladder shall be provided to allow a firefighter to safely dismount and descend to the rooftop. Design and installation documents shall be submitted to the Department for approval.

We respectfully request that the Commissioners of the Board of Standards and Appeals, not to approve the revised plans as submitted, unless the applicant seeks a variance from the Fire Department's Technical Management Unit.

By letter dated September 29, 2022, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application and revised plans.

In response to our "Letter of Objection" email on July 19, 2022, the architect of record has revised their plan to reduce the parapet height fronting on 66th Road to 3'-0" and 4'-0", to facilitate rooftop access for firefighting operations. Based upon the foregoing, the Fire 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 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. 21BSA007Q, dated October 3, 2022. 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 May 6, 2021, the Landmarks Preservation Commission ("LPC") states that the subject Premises have there are no architectural or archaeological significance.

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.

VI.

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*, the construction of a two-story, plus cellar, UG 4 house of worship that does not comply with the zoning requirements for lot coverage (Z.R. § 24-11), front yard (Z.R. § 24-34), side yards (Z.R. § 24-35), and rear yard (Z.R. § 24-36); *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved: October 3, 2022" — Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum lot coverage of 69%; a 6' side yard long the western lot line measuring; a 3' side yard along the eastern lot line; and a rear yard measuring 0' at the first floor and above;

THAT no access to the roof shall be permitted, except for maintenance and in the case of emergency;

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THAT in-ground planting shall be provided;

THAT a adequate engineering measures shall be taken to allow for in-ground planting and irrigation;

THAT all lighting sources that are located along the lot line adjacent to residential use shall be shielded from direct view to minimize any adverse effect on the surrounding neighbors;

THAT no audible sound devices shall be permitted outdoors;

THAT there shall be a noise attenuation device along the eastern fence and vines to provide a visual buffer;

THAT the applicant shall maintain an open line of communication and have a point of contact with the Community Board for construction supervision;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-64-BZ”), shall be obtained within four years, by October 3, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, October 3, 2022.

2020-71-BZ

CEQR #21-BSA-013K

APPLICANT – Eric Palatnik, P.C., for Strong River Properties LLC, owner.

SUBJECT – Application September 11, 2020 – 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.

PREMISES AFFECTED – 166 Coffey Street, Block 585, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”) dated August 13, 2020, acting on New Building Application No. 321592488, reads in pertinent part: “1) ZR 42-00, ZR 72-21: Proposed single family use in M1-1 district is prohibited as per ZR 42-00. Variance required as per ZR Section 72-21”.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an M1-1 zoning district, the development of a three-story, plus cellar, single-family residence, contrary to Z.R. § 42-10.

A public hearing was held on this application on April 11, 2022, after due notice by publication in *The City Record*, with a continued hearing on August 8, 2022, and then to decision on October 3, 2022. Community Board 6, Brooklyn, recommends approval of this application. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. The Board received four form letters of support and one letter of objection citing concerns about cohesion of the proposed project to neighborhood character, loss of light and air, and safety concerns related to the proposed construction.

I.

The Premises are located at the northeast side of Coffey Street, between Conover Street and Ferris Street, within an M1-1 zoning district, in Brooklyn. With approximately 25 feet of frontage along Coffey Street, 100 feet of depth, and 2,500 square feet of lot area, the Premises are currently occupied by a two-story, plus cellar, residence.

II.

The applicant proposes to construct a three-story, plus cellar, single-family residence with 3,591 of floor area (1.44 FAR); a front yard with a depth of 15’-0”; two side yards measuring 0’-0” each; a rear yard of with a depth of 30’-0” at the first floor and above; a wall height of 35’-6”; a total height of 35’-6”; no proposed parking space; and a front yard measuring 15’. In the subject M1-1 zoning district, residential use is not permitted, as per Z.R. § 42-10.

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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the narrowness of the subject lot and overall small lot size, site history, and structural instability—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 provided a Uniqueness Study demonstrating that within 1,000 feet of the site (the “Study Area”), the unique physical conditions of the site give rise to hardship in developing in conformance with the applicable zoning regulations. Specifically, the applicant represents that the small size and narrow width of the site frustrates its development for a permitted commercial or manufacturing use. The Uniqueness Study contains 132 sites within the Study Area and concludes that less than three percent display similar narrowness, lot size, and structural instability present at the subject Premises. The applicant further describes the structural instability at the subject site in the following

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terms:

1. The perimeter wood stud walls are erratically placed, and some are spliced.
2. In one location in the front cellar wall and in one location in the rear cellar wall the brick basement wall has failed, and the lawn has caved into the basement. Each of the collapsed regions is roughly five feet wide.
3. The second-floor framing, particularly near the stair, and parts of the roof framing, are deflecting significantly.
4. Various areas of walls and ceilings are caving in or missing.

Additionally, the applicant submitted as-of-right plans which concludes that the as-of-right commercial development for the subject site would be a one-and-a-half story, plus cellar, elevator building totaling 2,500 square feet. The applicant states that the small size, narrow two-level configuration, and the locational profile of a narrow street and adjacent residential uses presents positional conflict and limits expansion. Furthermore, the applicant states that Coffey Street has parking on both sides of the street and 15-foot-wide sidewalks on both sides, precluding sufficient access to a loading dock for a manufacturing or commercial building. Therefore, the applicant concludes that this as-of-right development does not support a viable project at the subject site. 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a single-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant represents that a grant of a bulk variance is necessary to enable the applicant to realize a reasonable return from the use of the subject Premises. In support of this contention, the applicant submitted an Economic Analysis, which concludes that the as-of-right commercial development would not be appropriate at the subject site due to the predominantly residential character of the site and surrounding residences on the subject block.

C.

The applicant further 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. The applicant maintains that the proposed residence would be within the character of the surrounding area, as the proposed residential use would be in keeping with the previous use of this lot, the adjacent residential uses, as well as the longstanding residential uses on the block. In support of this contention, the applicant submitted a three-dimensional diagram provided showing that the proposed residence would fit with its adjacent neighbors.

Moreover, the applicant further states that there is little

commercial retail activity, minimal pedestrian traffic and proximity to public transportation is restricted to bus services several blocks away from the subject site, as the existing, historically residential subject site is located on a traditionally primarily residential block. In support of this contention, the applicant submitted a Neighborhood Character Study, which concluded that residential use is predominant along the stretch of Coffey Street where the subject site is located and that the only building without dwellings near the site is a one-story warehouse directly across the street. The Study further found that neighboring blocks include multiple dwellings, single-family residences, and an array of low- to mid-rise commercial and industrial building. Moreover, the applicant points to the fact that an R5 zoning district is located 150 feet from the subject site and that most residential buildings along Coffey Street were constructed around the time of the subject building and many have remained occupied throughout the years.

At the direction of the Board, the applicant further elaborated on how the proposed project would be in keeping with the character of the block. In response, the applicant states that the building proposed would have three stories, as are the majority of the houses on the block, however, the proposed building would have all three occupiable stories above grade, versus utilizing an English Basement as may be currently seen on the block, but the proposed design can be found in surrounding buildings located at 164 Coffey Street and 184 Coffey Street. Furthermore, the applicant represents that the height of the proposed residence would be in keeping with the other three-story buildings on the block, namely its direct neighbor to the east, 164 Coffey Street. Here, the applicant declares that because the NYC Building Code requires two items which greatly thicken the roof composition, R49 roof insulation and the Green Roof requirement, that equates to an additional +/-18 inches above the roof slab. Therefore, the applicant states that to keep the proposed street wall height aligned with the neighboring building at 164 Coffey Street, it lowered the proposed parapet to curb height and provided a filagree guard rail set to the back of the curb for safety.

Finally, the applicant states that since the proposed building does not have an English Basement, the entryway would be two risers above grade, with the front door facing the street; the front porch provided to the west of the entry would be as the traditional stoop oftentimes seen in residences with English Basements; and the front-facing entry with a porch would allow for a similar relationship to the street as that of a building with a stoop. The applicant represents that to further encourage interaction with the street, the proposed design provides for balconies which are inset as opposed to projecting, keeping the sense of a continuous street wall as seen on the majority of the block. As such, the applicant concluded that the proposed building would enhance the residential parcels already located on this street and in the immediate surrounding neighborhood.

Accordingly, the Board finds that the proposed variance would not alter the essential character of the neighborhood or district in which the Premises are located;

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would not substantially impair the appropriate use or development of adjacent property; and would not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant states that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions inherent at the subject site and that the proposed use would be in line with the history of the site. In support of this contention, the applicant submitted a historical Sanborn map from 1880 demonstrating that the residential building on the site that has occupied this site since at least 1880. Additionally, the applicant submitted historical newspaper clippings and leases to reflect that on September 22, 1976, the City of New York City and the Port Authority of New York and New Jersey executed a 50-year lease giving final approval to a project to create a modern containership port in the Red Hook neighborhood of Brooklyn which included the subject site, as well as adjacent Lots 39 and 41.

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 notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant reiterates that without the requested variance, the owner of the Premises would be unable to develop the site with a feasible structure. The applicant further states that, aside from the requested waiver, the proposed development would conform and comply with all applicable zoning regulations within the R4A zoning district. 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.

At hearings, the Board raised concerns regarding the applications Z.R. § 72-21 (a) and (b) arguments. Specifically, with regard to the Z.R. § 72-21 (a) finding, the Board stated that the applicant should elaborate on its structural collapse analysis. The Board suggested that the applicant consider replenishing the empty tree pit. With regard to Z.R. § 72-21-(b), the Board voiced concerns that the proposed development scenario may generate higher costs in comparison to a single-story, full lot coverage, commercial building.

In response to the concerns regarding the Z.R. § 72-21(a), the applicant revised its Structural Analysis Report to explain the difficulty of maintaining the existing building. The report concluded that the structure is most likely relying on the adjacent structures to remain standing and is therefore, not structurally independent and that if the structure is to be occupied in the future, it would require a foundation; would need to be underpinned all around; the interior posts and chimney would need to be shored and braced and new footings placed underneath; and new side

walls would need to be added to make the existing structure separate from the neighboring buildings.

In response to the concerns about the application's Z.R. § 72-21 (b) findings, the applicant submitted a revised Economic Analysis Report to present a one-story (no cellar) project. The report concluded that although the construction cost for the one-story scenario would be lower than the as-of-right, one-and-one-half story scenario, the alternative single story commercial building generates a capitalized net operating income that is insufficient to offset development costs, resulting in a loss and an infeasible project. Additionally, the memo concludes that the single story as-of-right plan, although less costly, does not produce a feasible project, as the rental income is inadequate. Furthermore, the report finds that the lack of on-site parking in the proposed plan puts it at a competitive disadvantage compared to other newly constructed single-family townhouses. The report reiterates that the small site, its limited development potential and marketability, and the internal physical challenges of the building itself all contribute to the inability of the as-of-right scenarios to generate a return.

V.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 21BSA013K, dated October 3, 2022.

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* the construction of a three-story, plus cellar, single-family residence, contrary to Z.R. § 42-10; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved: October 3, 2022" — Nine (9) sheets; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-71-BZ"), shall be obtained within four years, by October 3, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, October 3, 2022.

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2021-67-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniel Husney, owner.

SUBJECT – Application October 22, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 2307 Ocean Parkway, Block 7183, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15B

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 24, 2022, acting on Alteration Type 1 Application No. B00589306, reads in pertinent part:

The proposed enlargement and conversion from a 2-family to a 1-family residence in an R4 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to section 23-143 of the Zoning Resolution.
2. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of section 23-461 of the Zoning Resolution.
3. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of section 23-47 of the Zoning Resolution.

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4 zoning district and the Special Ocean Parkway District, the enlargement of an existing two-story, with cellar, two-family, semi-detached residence that does not comply with zoning regulations for floor area ratio (“FAR”) (Z.R. § 23-143), side yards (Z.R. § 23-461), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on June 7, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area. Community Board 15, Brooklyn, recommends approval of this application on condition that the proposed project be limited to a moderate enlargement that fits the character of the neighborhood. The Board also received one form letter of support for this application.

The Premises are located on the east side of Ocean Parkway, between Avenue W and Lancaster Avenue, within an R4 zoning district and within the Special Ocean Parkway District, in Brooklyn. With approximately 26 feet of frontage along Ocean Parkway, an irregular depth ranging from 127 feet to 136 feet, and 3,291 square feet of lot area,

the Premises are occupied by an existing two-story, and cellar, two-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 this application seeks to enlarge the existing two-family, semi-detached residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, and cellar, two-family, semi-detached residence with approximately 2,765.47 square feet of floor area (0.84 FAR), a front yard with a depth of 19'-11.25", a side yard with a width of 4'-4.25" along the northern lot line, no side yard along the southern lot line, a rear yard with a depth of 37'-5" at the first floor and above, a perimeter wall height of 25'-0", and a total building height of 25'-0". The applicant proposes to horizontally and vertically enlarge the existing building resulting in a two-story, with cellar, and single-family, semi-detached residence with approximately 4,621.98 square feet of floor area (1.40 FAR), one side yard with a width of 4'-4.25", and a rear yard with a depth of 20'-7" at the first floor and 25'-0" at the second floor and above. The applicant proposes to increase the floor area at the first floor from approximately 1,492 square feet to 1,805 square feet, and at the second floor from 1,274 square feet to 1,713 square feet, and to add an attic with 1,104 square feet of floor area.

In this instant case, the applicant represented that the permitted FAR is based on Z.R. § 23-143, which applies only where the Premises are located in an area that constitutes a *predominantly built up area* (“PBUA”) under Z.R. § 12-10 (emphasis in original to denote defined term). Z.R. § 23-143 permits a maximum FAR of 1.35 in an R4 zoning district, instead of the underlying maximum FAR of 0.75 (see Z.R. § 23-142). The Board notes that the applicant has not demonstrated that the PBUA provisions apply to the Premises, and as such, the Board takes no position and defers to the Department of Buildings to determine whether the PBUA provisions are applicable. If DOB does not so determine, this approval is void and the applicant must return to the Board for an amendment to the resolution.

In the subject R4 zoning district, a maximum of 1.35 FAR is permitted, as per Z.R. § 23-143; a side yard with a minimum width of 8 feet is required, pursuant to Z.R. § 23-461; and a rear yard with a minimum depth of 30 feet is required, as per Z.R. § 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 out of 80 residences, 59 (74%) have an FAR of 0.84 or greater, ranging from 0.84 to 1.61, 4 (5%) of which have an FAR of 1.40 or greater. With respect to rear yards, the applicant submitted a rear yard study of the subject block demonstrating that out of 16 residences, 13 (81%) have rear yards with less than 37 feet of depth, ranging from 2 feet to

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36 feet, 4 (25%) of which have rear yards with less than 20 feet of depth. The applicant also submitted a 1929 Belcher-Hyde zoning map to show that the side yard with a width of 4'-4.25", which the applicant proposes to maintain, is a preexisting noncompliance (see Z.R. § 23-47). 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.

Under the conditions and safeguards imposed, the Board determines that 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 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, and cellar, two-family, semi-detached residence that does not comply with zoning regulations for floor area ratio, side yard, and rear yards, contrary to Z.R. §§ 23-143, 23-461, and 23-47; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Board Approved: October 3, 2022"—Nineteen (19) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum floor area of 4,621.98 square feet (1.40 FAR), a side yard with a minimum width of 4'-4.25", and a rear yard with a minimum depth of 20'-7" at the first floor and 25'-0" at the second floor and above, as illustrated on the BSA-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. 2021-67-BZ"), shall be obtained within four years, by October 3, 2026;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 3, 2022.

2021-70-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Rakhshan Lalehfar, owner.

SUBJECT – Application November 10, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family residence contrary to underlying bulk requirements. R2 zoning district.

PREMISES AFFECTED – 1206 East 21st Street, Block 7602, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated October 12, 2021, acting on Alteration Type 1 No. B00564441-11, reads in pertinent part:

BSA approval required the project has been filed under DOB NOW General Construction # B00564441-11. Herewith request that a formal denial be issued for the following objections:

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

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

A public hearing was held on this application on August 8, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area. Community Board 14, Brooklyn, recommends approval of this application.

The Premises are located on the west side of East 21st Street, between Avenue J and Avenue K, within an R2 zoning district, in Brooklyn. With approximately 50 feet of frontage along East 21st Street, 100 feet of depth, and 5,000 square feet of lot area, the Premises are occupied by an

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existing two-story, plus attic and 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 this application seeks to enlarge an existing single-family detached residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, plus attic and cellar, single-family detached residence with approximately 2,735 square feet of floor area (0.55 FAR), 137% OSR (3,750 square feet of open space), and a rear yard with a depth of 28'-6" at the first floor and above. The applicant proposes a horizontal and vertical enlargement of the existing building, resulting in a two-story, plus cellar, single-family detached residence with approximately 2,744 square feet of floor area (0.55 FAR), 118% OSR (3,228 square feet of open space), and a rear yard with a depth of 20'-0" at the first floor and 28'-6" at the second floor and above. The applicant intends to increase the floor area at the first floor, from 1,250 square feet to 1,772 square feet; second floor, from 996 square feet to 972 square feet; and to convert the 489 square feet of floor area in the attic to storage and crawl space (0 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 as required by Z.R. § 73-622. In the subject R2 zoning district, Z.R. § 23-141 permits a maximum FAR of 0.50 and a minimum OSR of 150%, and Z.R. § 23-47 authorizes a rear yard with a minimum depth of 30 feet. In support of the applicant's contention that the residence as enlarged comports with the built character of the neighborhood, the applicant surveyed single- and two-family residences within 400 feet of the Premises which are bound by the same relevant bulk regulations (the "Study Area"), finding that out of 51 residences, 48 residences (94%) have a FAR of 0.5 or greater, ranging from 0.51 to 1, and 46 residences (90%) have a FAR of 0.55 or greater. With respect to OSR, the applicant submitted a lot coverage study demonstrating that out of 51 residences, 33 residences (65%) within the Study Area have greater than 35% lot coverage, ranging from 36% to 59%. The applicant also submitted a rear yard study of the subject block demonstrating that out of 18 residences, 12 residences (67%) have rear yards with less than 30 feet of depth, ranging from 10 feet to 35 feet, and 11 residences (61%) have rear yards with less than 28.5 feet of depth.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-03 and 73-622 to *permit* the enlargement of an existing two-story, plus attic and cellar, single-family detached residence that does not comply with zoning regulations for FAR, open space ratio, and rear yards, contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Board Approved: October 3, 2022" — Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum FAR of 0.55 (2,743.87 square feet of floor area); a minimum of 118% OSR; and a rear yard with a minimum depth of 20'-0" at the first floor and 28'-6" at the second floor and above, as illustrated on the Board-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2021-70-BZ"), shall be obtained within four years, by October 3, 2026;

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

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

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

Adopted by the Board of Standards and Appeals, October 3, 2022.

2022-10-BZ

CEQR #22-BSA-021K

APPLICANT – Sherry and O'Neill, for RFR/K 55 Prospect Owner LLC, owner; Vivvi, Inc., lessee.

SUBJECT – Application February 4, 2022 – Special Permit (§73-19) to permit the operation of a daycare center (UG 3) (*Vivvi*) contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63,

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Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 3, 2022, acting on Alteration Type 1 Application No. B00647023-11 reads in pertinent part: “Proposed Day Care UG3 is not permitted as of right per Section 42-12 ZR in M1-6 district. Respectfully seeking Special Permit per Section 73-19 ZR.”

This is an application under Z.R. §§ 73-19 and 73-03 to permit, on a site located within a M1-6 zoning district, the operation of a Use Group (“UG”) 3 school, contrary to Z.R. § 42-10. This application is brought on behalf of Vivvi Daycare Center (the “School”).

A public hearing was held on this application on May 24, 2022, after due notice by publication in *The City Record*, with continued hearings on July 18, 2022, August 8, 2022, and September 13, 2022, and then to decision on October 3, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 2, Brooklyn, recommends approval of this application. The Board received one form letter of support for this application.

The Premises are located on a through lot bounded by Prospect Street to the south, Adams Street to the west, and Pearl Street to the east, within an M1-6 zoning district, in Brooklyn. With approximately 200 feet of frontage along Prospect Street, 100 feet of frontage along Peal Street, and 20,704 square feet of lot area, the Premises are currently occupied by an existing 10-story, commercial building.

The applicant proposes to renovate the interior portion of the ground floor and cellar floor. The proposed daycare center would occupy 9,100 square feet, comprised of 7,075 square feet on the ground floor and 2,025 square feet of the cellar, in which the first floor would be contain the reception area, multipurpose room, eight classrooms, restrooms/toilet, and office space; and the cellar would contain the office, pantry, staff area, storage, and one classroom. The applicant states that the proposed project would not enlarge the building’s envelope or affect the exterior of the property. The applicant further states that there would be no exterior classrooms, play areas, or structural changes to the building. The applicant represents that it would provide stroller storage in a dedicated space on the ground floor as indicated on the plans and ensure that such area would not impede traffic or affect pedestrian flow. The applicant seeks a special permit to allow the operation of a school in the M1-6 zoning district, where UG 3 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(c) definition of “school” as it is a childcare service operating under a permit issued pursuant to Section 47.03 of the New York City Health Code, which states:

- (a) Permit required. No person shall operate a program as defined in this Article without a permit issued by the Commissioner, provided, however, that a prekindergarten or kindergarten that is part of or located in and operated by an elementary school voluntarily apply for and hold a permit as a childcare program. Childcare program permits issued before the effective date of this Article will be deemed to be childcare program permits.

The applicant states that it plans to have documentation for their license to satisfy the requirements of Article 47 when the space is built out, finalized with DOB and FDNY, and inspected, approved, and permitted by DOHMH. Per Article 47.03-47.09, the applicant states that it shall have submitted the following items to the Health Department:

- An architect’s or engineer’s plan of the facility;
- A certificate of occupancy from the Department of Buildings, stating that the facility meets the physical requirements for a childcare program (e.g., it has a adequate floor space, is compliant with the Americans with Disabilities Act, etc.);
- A fire inspection report certifying that the facility is fire-safe;
- Proof that the staff meets Code requirements such as certification and training, criminal justice and child abuse screening, and immunizations;
- Proof that the facility is free of lead-based paint;
- Test results for the lead content of water from the facility’s taps and drinking fountains;
- A written safety plan [47.11] containing policies and procedures for meeting the requirements of Article 47.

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 a 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 it has been actively seeking sites in Brooklyn that would allow for

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enrollment expansion and services to be shared with other neighborhoods within New York City. In support of this contention, the applicant submitted a letter from a registered broker stating that the three other sites in contention (10 Jay Street, 85 Jay Street, and 81 Prospect Street) (1) did not satisfy the applicant's space or layout needs for location occupancy, safety, security; (2) were economically unfeasible or lacked affordability and/or; (3) faced the same zoning/as-of-right requirements as the subject site. 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 located less than 400 feet from an R7-1 zoning district, an R6 zoning district, and an MX (M1-5/R9-1) zoning district, respectively, which permit UG3 as of right. Moreover, the applicant states that an R7-1 zoning district is mapped 30 feet west of the Premises along Adams Street between York and Sands Street and 190 feet south of the site along the centerline of Sands Street to the west of Pearl Street; an R6 zoning district is mapped approximately 285 feet east of the subject site along the centerline of Jay Street from York Street to south Concord Street; and an MX zoning district is mapped approximately 200 feet north of the side of York Street between Adams and Jay Streets. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of the R7-1, R6, and MX 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 notes that it conducted a noise analysis in its Environmental Assessment Statement ("EAS") which concluded that the predominant noise sources in the area of the Premises are vehicular traffic. According to the analysis, the proposed project would not double vehicular traffic, or its equivalent in noise on nearby roadways, and would therefore not result in a perceptible increase in vehicular noise. The noise analysis was conducted to determine the level of building attenuation necessary to ensure that interior noise levels satisfy City Environmental Quality Review ("CEQR") requirements and to examine whether the newly created playground/outdoor spaces would result in adverse impacts to adjacent receptors which may require additional mitigation. As local traffic and the elevated tracks of the B, D, N and Q subway lines (Manhattan Bridge) are the dominant sources of noise in the vicinity of the proposed site, a total of three receptor locations were selected to be along the perimeter of the proposed site located at 55 Prospect Street, which would contain the pre-school/child care center in the future under the Proposed Action Noise monitoring was conducted at

each receptor location from the street level where the proposed child care center's frontage would be located. The three selected receptor locations around the Project Site were 1) the northern side of Prospect Street, approximate midpoint of proposed child care center's southerly frontage (approximately 50 feet west of Pearl Street); street level; 2) the west side of Pearl Street, proposed child care center's eastern frontage with a direct line of site to the elevated B/D/N/Q lines (approximately 75 feet north of Prospect Street; street level; 3) Frontage facing the Brooklyn Queens Expressway ("BQE"), approximate midpoint of proposed child care center's northern frontage (approximately 50 feet west of Pearl Street) street level. At each receptor site, existing noise levels were determined by field measurements. At each of the three receptor locations due to their close proximity to the elevated B/D/N/Q subway lines, one hour noise measurements were performed at street level for the following weekday peak periods: AM (8:00 a.m. to 9:00 a.m.), midday (12:00 p.m. to 1:00 p.m.) and PM (5:00 p.m. to 6:00 p.m.).

To satisfy CEQR interior noise level requirements and ensure acceptable interior noise levels for school uses, the building's facades with frontage along Prospect Street must provide a minimum composite window/wall attenuation rating of 35 dBA; any building facades with frontage along Pearl Street must provide a minimum composite window/wall attenuation rating of 42 dBA; and any building facades with frontage facing the BQE must provide a minimum composite window/wall attenuation rating of 39 dBA. Based on interior noise measurements taken at the site, it was estimated that the existing Outdoor-Indoor Transmission Class ("OITC") rating along the proposed site's southern (Prospect Street), eastern (Pearl Street), and northern (BQE) facades are 29 dBA, 28 dBA, and 26 dBA, respectively. As such, the applicant would need to provide additional noise attenuating provisions at the site, in addition to the existing OITC currently provided at the site, to ensure acceptable interior noise levels of 45 dBA or less for school/childcare uses. Specifically, the southern facade facing Prospect Street would need to provide an additional composite window/wall attenuation rating of 6 dBA; the eastern facade facing Pearl Street would need to provide an additional composite window/wall attenuation rating of 14 dBA; and the northern facade facing the BQE would need to provide an additional composite window/wall attenuation rating of 13 dBA.

The applicant proposes to take proactive measures and methodologies to attenuate the noise levels at the Premises and bring those levels within acceptable ranges and to install interior "picture" windows for the purposes of sound attenuation. The applicant states that proposed interior windows would be installed in-board of the existing windows and will have an air gap between the existing window assembly and the new one. 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

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children traveling to and from the School. Over the course of hearings, the Board raised concerns over the safety of the students during pick up and drop off times, specifically due to the nature of the other uses in the surrounding area which often results in heavy traffic at these times.

In response to the Board's concerns, the applicant proposes the following operational plan for pickup and drop-offs:

Patrons of the proposed childcare center are expected to work and/or live in the immediate vicinity of the Premises. As such, children are expected to largely arrive and depart the facility by foot or public transportation accompanied by adults, and there would be minimal vehicle trips to the proposed facility. As noted in the EAS Project Description, Vivvi works with employers of all sizes to make exceptional care and learning more accessible and affordable by working with employers to sponsor tuition. The proposed childcare facility is expected to be a neighborhood amenity for the surrounding residential neighborhood and businesses. Vivvi commits to taking proactive measures to discourage any childcare patrons from trying to drop off or pick up on Prospect Street or Pearl Street. The proposed childcare center will have a clear, structured policy for student arrival and departure procedures. Standard operating hours will be from Monday through Friday, 7:00 AM to 7:00 PM. Our 7 AM to 7 PM policy is family friendly so that families can have flexible drop off and pick up windows. We expect 20% of children to arrive before 8 AM and 100% to arrive by 9 AM. 80% of families to pick up by 5 PM, 10% by 6 PM, and the final 10% by 7 PM. No staff will be allowed to pick up children from a car. For auto trips and those clients or individuals who must drop off and pick up, we do not anticipate any congestion. Vivvi will inform all clientele that there will be no vehicular standing, parking or drop off provided by Vivvi or the building. If driving, clients will be advised to find legal parking spots in garages or at meters nearby. No temporary stopping in front of our entrances will be allowed. Families will be expected to walk children to the center's separate and dedicated front door entrance on Prospect Street and the transfer to/from staff will take place within the proposed facility's lobby and not on the curb. Vivvi will inform patron families that:

No parking will be provided and no staff will be permitted to pick up/bring children to/from a car.

- Vivvi will notify patron families that vehicles will not be permitted to park or stand on either Prospect or Pearl Streets abutting the Premises.

- No vehicles associated with the facility, such as buses, staff and caregiver vehicles, will be allowed to block moving lanes.
- Parking is not provided on site.
- Vivvi will inform patron families that legal on street parking can be found along Adams, Sands, and York Streets near the Premises.
- Parents will also be asked to notify staff roughly 30 minutes before arriving, and to send staff a message on expected arrival time for pick up to help with coordinating the arrival/departure of children.
- Vivvi does not provide transportation and no buses or vans will be used by the facility. Vivvi commits to ensuring that the operations of arrival and dismissal detailed in this letter will be carried out. If any issues do arise during arrival and dismissal relating to vehicles, Vivvi commits to resolving these issues expeditiously and in accordance with the delineated procedures.

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. 22BSA021K, dated October 3, 2022. 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 March 24, 2022, the Department of Transportation ("DOT") School Safety division states that they have no comments on this location. 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 August 19, 2022, the Department of Environmental Protection ("DEP"), Bureau of Environmental Planning and Analysis states that it has reviewed the Response to Comments document and revised EAS, from August 2022. DEP has the following comments:

Air Quality:

Based on the air quality analysis performed for the proposed project, DEP has concluded that the proposed project would not result in significant adverse impacts related to air quality.

Regarding mobile sources, the vehicle traffic from the proposed project would not exceed the screening thresholds. Therefore, the proposed

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project would not result in potential significant adverse impacts related to mobile sources.

Regarding stationary sources, the existing HVAC and hot water system will be used for the proposed project and therefore the effects of the boiler emissions on the surrounding area will not change.

Based on the industrial character of the surrounding area, no industrial sources was identified within a 400-foot radius from the proposed project.

In conclusion, regarding mobile, stationary, and industrial sources, there would be no significant adverse air quality impact due to the proposed project on the surrounding area.

Noise:

Based on the noise measurements performed, DEP has concluded that there is no potential significant impacts pertaining to mobile or stationary sources. Project-generated traffic would not double vehicular traffic on nearby roadways, and therefore would not result in a perceptible increase in vehicular noise.

The project is located near an elevated train. Based on ambient noise analysis was performed for vehicular and train noise, and the higher window-wall attenuation requirement between two noise sources is applied to the proposed project. The proposed building will require a window-wall attenuation of 36dBA attenuation on the southern façade, facing Prospect Street, 42 dBA attenuation on the eastern façade, facing Pearl Street, and 39 dBA on the northern façade, facing Brooklyn Queens Expressway to achieve an acceptable interior noise level, respectively. In addition, the proposed project will provide alternate means of ventilation during closed-window condition. With these measures in place, there is no significant adverse impacts pertaining to noise.

In conclusion, as it pertains to vehicular and train sources, the proposed project will not have a significant adverse noise impact on the project itself or in the surrounding area.

By correspondence dated July 14, 2022, DEP, Bureau of Sustainability states that it has reviewed the June 2022 Vapor Intrusion Investigation (Phase II), and the July 2022 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) for the proposed project. During the May 2022 fieldwork, three soil vapor samples, five indoor air samples, and one ambient air sample were collected and analyzed for volatile organic compounds (VOCs) by United States Environmental Protection Agency Method TO-15. The soil vapor analytical results revealed that several VOCs (1,1,1 trichloroethane, 1,2,4-trimethylbenzene, 1,2-dichlorotetrafluoroethane, 1,3,5-trimethylbenzene, 2-butanone, 4-methyl-2-pentanone, acetone, benzene, carbon disulfide, cyclohexane, dichlorodifluoromethane, ethyl

benzene, isopropanol, methyl methacrylate, methylene chloride, n-heptane, n-hexane, o-xylene, p- & m-xylenes, p-ethyltoluene, tetrachloroethylene (PCE), tetrahydrofuran, toluene, trichloroethylene (TCE) and trichlorofluoromethane) were detected. TCE was detected above its air guideline value (August 2015 update) in the New York State Department of Health’s October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York. The indoor air analytical results revealed that several VOCs (1,1,2-trichloro-1,2,2-trifluoroethane, 1,2,4-trimethylbenzene, 2-butanone, 4-methyl-2-pentanone, acetone, benzene, carbon tetrachloride, chloromethane, dichlorodifluoromethane, ethyl acetate, ethyl benzene, isopropanol, methyl methacrylate, methylene chloride, n-heptane, n-hexane, o-xylene, p- & m- xylenes, p-ethyltoluene, PCE, toluene, and trichlorofluoromethane) were detected. The outdoor air analytical results revealed that several VOCs (2-butanone, acetone, benzene, carbon tetrachloride, chloromethane, dichlorodifluoromethane, isopropanol, methylene chloride, p- & m- xylenes, toluene, and trichlorofluoromethane) were detected. The July 2022 RAP proposes the excavation, transportation and off-site disposal of soil in accordance with applicable federal, state, and local regulations; if any underground storage tanks are encountered, the tanks will be removed and disposed of in accordance with New York State Department of Environmental Conservation requirements; stockpiled soil will be covered with polyethylene sheeting; dust control; air monitoring; should any fluids required to be removed from the Site, all fluids will be handled, transported and disposed in accordance with applicable laws and regulations; and installation of a vapor barrier system on the existing concrete basement slab of the building, consisting of 20-mil Retro-Coat Vapor Intrusion Coating System. The CHASP addresses worker and community health and safety during rehabilitation. Based upon our review of the submitted documentation, we have the following comments and recommendations to BSA:

RAP:

- It should be noted that excavation is not anticipated at the Site. However, the RAP includes measures for management of excavated soil, underground storage tank removal, fluids management, etc. in the event that there may be excavation. Therefore, BSA should inform the applicant that if soil disturbance is necessary to facilitate the Proposed Action, additional review and site characterization may be necessary by BSA.

CHASP:

- BSA should instruct the applicant to include the names and phone numbers of the site safety personnel (i.e., Project Manager, Site Supervisor, Site Health and Safety Officer, and Alternate Site Health and Safety Officer, etc.) when they are appointed, prior to the start of any rehabilitation activities. • BSA should instruct the applicant that Appendix D

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should include all associated information fact sheets or safety data sheets for the potential chemicals of concern that were identified during the Phase II (Vapor Intrusion Investigation).

DEP finds the July 2022 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., installation of vapor barrier, etc.). A revised RAP and CHASP was submitted to BSA on July 18, 2022 responding to DEP comments.

By correspondence dated July 19, 2022, the Department of Transportation (“DOT”) Traffic Engineering and Planning division states that following the 2021 CEQR Technical Manual, a Level 1 (Trip Generation) screening assessment was conducted for the weekday AM, midday and PM peak hours. NYC DOT concurs with the lead agency’s determination that a detailed traffic and pedestrian analysis is not warranted as the site generated trips would not exceed the 50-vehicle and 200-pedestrian trip thresholds in any peak hours. The EAS identifies the following safety measure to ensure parents, guardians, and children would be able to access the proposed child-care center safely:

- Building management would not permit deliveries during the child-care center’s drop-off and pick-up times between the hours of 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Deliveries to the building would be coordinated between the proposed community facility and existing building tenants to avoid loading activities during the child-care center’s arrival and dismissal periods.

The applicant has also committed to the following proposed operational conditions:

- All vehicles such as buses, staff, and caregiver vehicles associated with the child-care center will not block moving lanes.
- There will be no vehicular standing along Prospect Street or Pearl Street.
- There will be no vehicular drop-offs or pick-ups along Prospect or Pearl Street.
- The child-care operator will ensure that the arrival/dismissal protocol described in the Commitment Letter is adhered to.

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.

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 within a M1-6 zoning district, the operation of a school, contrary to Z.R. § 42-10; *on condition* that all work, site conditions and operations shall substantially conform to drawings filed with this application marked “Board Approved October 3, 2022” – Ten (10) sheets; and on *further condition*:

THAT the proposed building will require a window-wall attenuation of 36 dBA attenuation on the southern façade, facing Prospect Street, 42 dBA attenuation on the eastern façade, facing Pearl Street, and 39 dBA on the northern façade, facing Brooklyn Queens Expressway to achieve an acceptable interior noise level, respectively;

THAT the proposed project will provide alternate means of ventilation during closed-window condition;

THAT a Professional Engineer (“P.E.”) will certify a Remedial Closure Report at the completion of all remedial activities with the site, including installation of a vapor barrier;

THAT the Remedial Closure Report will be submitted to DEP for review and approval;

THAT building management shall not permit deliveries during the child-care center’s drop-off and pick-up times between the hours of 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m.;

THAT deliveries to the building shall be coordinated between the proposed community facility and existing building tenants to avoid loading activities during the childcare center’s arrival and dismissal periods;

THAT all vehicles such as buses, staff and caregiver vehicles associated with the child-care center shall not block moving lanes;

THAT there shall be no vehicular standing along Prospect Street or Pearl Street;

THAT there shall be no vehicular drop-offs or pick-ups along Prospect or Pearl Street;

THAT the child-care operator shall ensure that the arrival/dismissal protocol described in the Commitment Letter is adhered to;

THAT the permit application for all proposed work associated with this approval shall indicate that no in ground disturbance or earth work shall be performed in connection with the proposed development;

THAT to the extent that it is determined that in ground disturbance and/or earth work is necessary to facilitate the proposed development, the applicant is directed to return to the Board for additional review and failure to comply with this restriction shall constitute a violation of this resolution and may constitute the basis for denial or revocation of a building permit or a certificate of occupancy for all other

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applicable remedies (*see* Z.R. § 73-04);

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. 2022-10-BZ”) shall be obtained within four years, by October 3, 2026;

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, October 3, 2022.

2022-53-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA.

PREMISES AFFECTED – 33 Hempstead Avenue, Block 3808, Lot 4. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a special permit, pursuant to Z.R. § 73-71, to legalize, in an R3-1 zoning district and a Lower Density Growth Management Area, the underlying bulk regulation for the replacement of a residence damaged/destroyed by Superstorm Sandy, on a property which is registered in the New York City Build it Back Program, that does not comply with the zoning requirements for side yard, total yard, percentage of front yard to be planted, required parking in a Lower Density Growth Management Area, ground floor level mitigation options, permitted obstructions in required yard, and minimum front yard, contrary to Z.R. §§ 25-22(b), 23-451, 23-44(a)(7), 64-332(b), 64-332(c), and 64-52.

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).

A public hearing was held on this application on September 13, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located on the east side of Hempstead Avenue, between Olympia Boulevard and Colony Avenue, in an R3-1 zoning district and a Lower Density Growth Management Area, in Staten Island. With approximately 20 feet of frontage along Roxbury Avenue, 95 feet of depth, 1,900 square feet of lot area, the Premises are currently occupied by a two-story, single-family residence.

The applicant seeks a special permit, under Z.R. § 73-71, to legalize the existing two-story, single-family 950 square foot residence. The applicant described the residence as such: the first floor is approximately 14.00 feet wide by 39.60 feet long, fronted by a metal porch and an ADA lift, while containing, a shared kitchen/ dining area, a half bath, and laundry closet at 554 square feet; the second-floor contains two bedrooms, and a full bathroom at approximately 400 square feet; a side yard which measures 3.39 feet; one side yard which measures 2.39 feet; a front yard measuring between 13.94 feet to 14.09 feet; a perimeter wall with a height of 9.10’; a building height of 23.12’ building height measured from the reference plane (“RP”), per Z.R. § 64-321. The applicant notes that the reference plane is equivalent to the Flood Resistant Construction Elevation (“FRCE”) at elevation 14.00, which is 9.41 feet above grade. Furthermore, the applicant represents that the residence is not located in a fire district and has a fire sprinklers system installed by the modular manufacturer, as well as having a construction class of V-A with a one-hour exterior and interior walls fire rating, and with a two-hour fire rated underside assembly.

In subject R3-1 zoning district, for cottage envelope buildings, Z.R. § 64-332(c) requires a minimum side yard width of three feet and a total side yard width of six feet. Pursuant to Z.R. § 23-44 (a)(7), permitted obstruction in open space: “Eaves, gutters, or downspouts, projecting into such open space not more than 16 inches or 20 percent of the width of such open space, whichever is the lesser distance.” As per Z.R. § 23-451, a minimum 25 percent of the front yard must be planted. Additionally, Z.R. § 25-22(b) requires two parking spaces for residence located in a Lower Density Growth Management Area. Moreover, as per Z.R. § 64-52, the necessary ground floor level mitigations

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options require a Type 4 Blank Wall for residential buildings. Z.R. § 64-332(b) permits:

Where an adjacent front yard is shallower than the minimum required pursuant to the applicable district regulations, than the front yard of the zoning lot containing cottage envelope buildings may be as shallow as the shallowest adjacent front yards.

Under Z.R. § 64-332(b), the required minimum front yard in an R3-1 district is 15 feet.

The applicant seeks a special permit pursuant to Z.R. § 73-71 to waive the zoning regulations relating to the minimum three feet required side yard for existing narrow zoning lots, total 6.33 feet total side yard requirements, 25 percent of front yard planting requirements, two required parking spaces, one point required ground level mitigation options, a roof overhang into side yard (16 inches or 20% yard, whichever is smaller), and front yard depth requirements may be as shallow as shallowest adjacent front yard (adjacent front yard 14.73 feet, subject property is 13.94 feet). The applicant notes, as per the requirement under Z.R. § 64-5, it cannot achieve required point in this category without a major reworking of the site. As per Z.R. § 23-44(a)(7), the applicant describes that existing eave and gutter assembly are 16 inches while the maximum projection permitted in the east yard is 5.74 inches, which would be the lesser distance. The applicant further states that the units are fabricated with an overhang (eave) of 12 inches, the gutter attached to the eave projects an additional 4 inches, thereby projecting into the required side yard.

As per Z.R. § 64-332(b), the applicant contends that it is unable to meet the requirements of 15 feet in a R3-1 zoning district as the property is deficient in the required front yard depth of approximately 8 inches under the cottage rules and approximately 11 inches under the underlining zoning district.

As a preliminary matter, the Board states that the subject site meets the conditions outline in Z.R. § 73-71 (a), in that (1) the building complies with flood-resistant construction standards; (2) any modification of height and setback regulations related to increasing the permitted overall height shall not exceed the maximum height permitted by the applicable underlying district regulations by 10 percent, or 10 feet, whichever is greater, as measured from the reference plane; and any increase in the amount of permitted floor area shall be limited to no more than 20 percent of the floor area permitted on the zoning lot, and in no event more than 10,000 square feet of floor area. However, such restriction shall not apply to non-complying buildings with non-complying floor area, provided that the total floor area of the altered, enlarged, relocated, or reconstructed building, does not exceed the amount of existing floor area of such pre-existing building.

As per Z.R. § 73-71(b)(1), the applicant represents that there would be a practical difficulty in complying with flood-resistant construction standards without the requested modifications and that such modifications are the minimum necessary to allow for an appropriate building in compliance

with flood-resistant construction standard. The existing narrow lot has approximately one half of the required lot area and half of the required lot width. The applicant notes that the footprint at the subject site is the minimum required to meet Build it Back Minimum Program Standards and New York City Building Code room sizes, and, as such, there would be practical difficulties in complying with flood resistant standards without such modifications and are the minimum modifications required.

As per Z.R. 73-71 (b)(2), the applicant notes and the Board finds that the proposal does not include a request to modify the minimum bulk regulations related to height; thus, the finding is inapplicable in this case.

As per Z.R. § 73-71(b)(3), the applicant represents that the requested modification related to parking regulations to permit a reduction in the number of accessory off-street parking spaces and the change in the location of accessory off street parking spaces would facilitate an improved site plan; not cause traffic congestion; and not have undue adverse effects on residents, business, or community facilities in the surrounding area, as applicable including the availability of parking spaces for such uses. Specifically, the applicant describes that the existing site as an interior, undersized lot with less than the required lot width and lot area. The applicant provided a pre-demolition site survey which indicates that at the Premises, there was a parking area for one car located in the front yard adjacent to the west side yard lot line; there was no curb cut; and footprint indicated a front yard of 32.6 feet and a non-complying rear yard of 12.2 feet. The applicant represents that the new building footprint creates a complying rear yard, and, as such is no feasible way to access the rear yard for parking through the side yard because the side yards widths are less than three feet. Furthermore, the applicant points out how several of the newer residences located on Hempstead Avenue are situated on wider lots, between 30-40 feet, and have off street parking located in their front yards or garages.

Additionally, the applicant states that the homeowner's request for a reasonable accommodation was granted and a lift was installed. At the subject lot, the design flood elevation is approximately 11.5 feet above curb grade. The applicant describes that the street wall of the property contains the lift and front entry stairs, and the design solution resulted in almost the entire front yard being utilized for front entry access. Under Z.R. § 25-62, the size and location of spaces for one parking stall is 18 feet by 8 feet 6 inches and requires two spaces. The applicant further notes that there is no physical way to access to the rear yard for parking or in the side yards due to the fact the existing side yards measure approximately three feet wide. Therefore, the applicant concludes that the elimination of the required on-site parking would facilitate an improved site plan and would not cause any additional traffic congestion.

As per Z.R. § 73-71(b)(4), the applicant states that the relief requested would not alter the essential character of the neighborhood and would keep long-time residents in place

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and in harmony with the neighborhood goals. The applicant states that the flood resistant construction and previous zoning that the residence was designed for was intended to provide guidance for future potential development in flood hazard zones, and the use of the mitigating elements, green plantings, change in stairway direction contribute to a greater sense of urbanism and guide future development. In support of this contention, the applicant provided a tax map, which illustrates that the majority of the homes within a 200-foot radius of the subject site are similar to the subject site: one to two story detached, semi-detached bungalow, and multifamily type residences blended with mixed residential/commercial, commercial, public facilities, parks, and institutions. For example, the adjacent property located at 31 Hempstead Avenue has a front yard measuring 15.81 feet, and the property located 35 Hempstead Avenue has a front yard measuring 14.74 feet, while the front yard at the subject site is 13.94 feet. The applicant states that the design at the residence follows the urban context of Midland Beach and contributes to the improvement of the essential character of the neighborhood and provided site photos which demonstrate that the location of the home on the lot is consistent of the residences along Hempstead Ave and nearby streets.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. § 73-71 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 makes each and every one of the required findings under Z.R. § 73-71 to *permit*, in an R3-1 zoning district and a Lower Density Growth Management Area, the legalization of a two-story, single-family residence that does not comply with the zoning requirements for side yard, total side yard, percentage of front yard to be planted, required parking in a Lower Density Growth Management Area, ground floor level mitigation options, permitted obstructions in required yards, and front yard, contrary to Z.R. §§ 23-44(a)(7), 23-451, 25-22(b), 64-332(b), 64-332(c), and 64-52; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: October 3, 2022”—Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth 13.94 feet; one side yard measuring a minimum of 2.39 feet; two side yards measuring a minimum total of 5.78 feet; zero provided ground floor level mitigation elements; and zero parking spaces; 0 square feet of front yard planting; and a maximum of 16 inches of allowable projections into the required side yard;

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 October 3, 2026;

THAT the approved drawings shall be considered

approved only for the portions related to the specific relief granted;

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, October 3, 2022.

2022-54-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build It Back Program (legalization application) within Breezy Point. R4 ZD, LDGMA.

PREMISES AFFECTED – 128 ½ Roxbury Avenue, Block 16340, Lot 50. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a special permit, pursuant to Z.R. § 73-71, to legalize, on a site within in an R4 zoning district, the underlying bulk regulations for the replacement of a residence damaged/destroyed by Superstorm Sandy, on a property which is registered in the New York City Build It Back Program, that does not comply with the zoning requirements for side yards, building access mitigation options, ground floor level mitigation options, and legality of a previous building footprint, contrary to Z.R. §§ 25-22(a), 64-332(c), 64-51, and 64-52.

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).

A public hearing was held on this application on

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September 13, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located at the intersection of Roxbury Avenue and Hillside Avenue, in an R4 zoning district and the Breezy Point Cooperative, in Queens. With approximately 17 feet of frontage along Roxbury Avenue, 17 feet of feet of frontage along Hillside Avenue, 78 feet of depth, 1,338 square feet of lot area, the Premises are currently occupied by a three-story, single-family residence.

The applicant seeks a special permit, under Z.R. § 73-71, to legalize the existing three-story, single-family, 999.53 (0.75 FAR) square foot residence. The applicant describes the existing structure as such: the first floor is primarily used as storage, and therefore, the area is not calculated into the zoning FAR; the second floor is approximately 14 feet wide by 40 feet long and contains the living room, a shared kitchen/dining area, and a half bath, laundry closet and mechanical closet (542.95 total zoning floor area); the third floor contains two bedrooms, storage area, linen closet, and a full bathroom at 524.52 square feet. The applicant contends that the third floor qualifies for a splay deduction of 61.40 square feet, therefore, the total zoning floor area of the third floor is 456.58 square feet. The applicant also submitted a survey which found that the front yard at the subject site fronting on Roxbury Avenue measures 17.85 feet; the front yard fronting on Hillside Avenue measures 19.40 feet; the east side yard measures 1.13 feet; the west side yard measures 2.02 feet; the lot coverage is 41.9%; measuring from the Flood Resistant Construction Elevation ("FRCE"), the building height is 23.50 feet; and the perimeter wall has a height of 9.40 feet. The applicant represents that because the building is within a fire district and has fire sprinklers system installed, and the buildings construction class is II-A with one hour exterior and interior walls fire rating, and with a one-hour fire rated underside assembly in an enclosed concrete wall foundation.

In subject R4 zoning district, for cottage envelope buildings, Z.R. § 64-332(c) requires a minimum side yard width of three feet and a minimum total side yard width of six feet. Under Z.R. § 25-22 (a), where individual parking facilities are provided, one parking space is required. Moreover, as per ZR 64-51 requires building access mitigation options. Under Z.R. § 64-52, the necessary ground floor level mitigation options require a Type 4 Blank Wall for residential buildings, and as the subject lot has two front yards, blank walls are required at each front yard.

The applicant seeks a special permit pursuant to Z.R. § 73-71 to waive the requirements of Z.R. § 64-51 for building access mitigation options and Z.R. § 64-52 for ground floor level mitigation elements, stating that it cannot achieve the required point in this category without a major reworking of the building elements and site. The applicant points to the fact that because the residence has two frontages on unmapped streets, the site is accessed by two public right of way paths. Furthermore, Z.R. § 62-52 requires a Type 4 Blank Wall for residential buildings, and as the subject site is a through lot, with two front yards, blank walls are required at each front yard.

The applicant seeks to waive the requirements of Z.R. § 64-332(c) due to the undersized, narrow lot condition. Additionally, the applicant seeks to waive the parking requirements under Z.R. § 25-22(a) and states that as the subject lot is narrow and shallow, located on unmapped, public right of way streets, which are approximately five to six feet wide, concrete sidewalks and sand paths are used to access the residence.

As a preliminary matter, the Board states that the subject site meets the conditions outline in Z.R. § 73-71 (a), in that (1) the building complies with flood-resistant construction standards; (2) any modification of height and setback regulations related to increasing the permitted overall height shall not exceed the maximum height permitted by the applicable underlying district regulations by 10 percent, or 10 feet, whichever is greater, as measured from the reference plane; and any increase in the amount of permitted floor area shall be limited to no more than 20 percent of the floor area permitted on the zoning lot, and in no event more than 10,000 square feet of floor area. However, such restriction shall not apply to non-complying buildings with non-complying floor area, provided that the total floor area of the altered, enlarged, relocated, or reconstructed building, does not exceed the amount of existing floor area of such pre-existing building.

As per Z.R. § 73-71(b)(1), the applicant represents that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standard. The subject site is located in the Breezy Point Cooperative area, and the applicant declares that the existing narrow and shallow lot has approximately one-third of the required lot area, about 57% less of the required width and over 18% less of the required lot depth. Furthermore, the applicant states that the design of the residence is the minimum required to meet the Build it Back Minimum Program Standards and the New York City Building Code room sizes. As such, the applicant states that there would be practical difficulties in complying with flood resistant standards without such modifications and are the minimum modifications required.

As per Z.R. 73-71 (b)(2), the applicant notes and the Board finds that the proposal does not include a request to modify the minimum bulk regulations related to height; thus, the finding is inapplicable in this case.

As per Z.R. 73-71(b)(3), the applicant represents that the requested modification related to parking regulations to permit a reduction in the number of accessory off-street parking spaces and the change in the location of accessory off street parking spaces would facilitate an improved site plan; not cause traffic congestion; and not have undue adverse effects on residents, business, or community facilities in the surrounding area, as applicable including the availability of parking spaces for such uses. The applicant contends that the existing site is an interior, undersized lot with less than the required lot width, lot depth and lot area; the site did not have on-site parking prior to reconstruction,

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and there is no feasible way to provide on-site parking and curb cut because Roxbury and Hillside Avenues are pedestrian streets and cannot accommodate a vehicle. The applicant represents that changes to the preconstruction streets and on-site parking conditions are proposed, and residents currently park in a community parking lot located at Beach 178 Street and along Rockaway Point Boulevard.

As per. Z.R. § 73-71(b)(4), the applicant states that the relief requested would not alter the essential character of the neighborhood and would keep long-time residents in place and in harmony with the neighborhood goals. To begin, the applicant states that the majority of the residences located in the Breezy Point/Roxbury community are accessed by sandy paths with concrete walk approximately between five and six feet wide; are on small lots and have side yards of between two to three feet between residences; and face the water or are within two blocks of the water. To support these contentions, the applicant submitted a tax map which demonstrates that within a 200-foot radius of the subject site, a majority of the residence are one- to two-story detached and semi-detached bungalows blended with community open space and outdoor recreation areas. As such the applicant states that the design of the subject residence follows the beach bungalow/resort community context of the Breezy Point Cooperative and contribute to the improvement of the essential character of the neighborhood, as evident in the site photos. Furthermore, the applicant declares that the location of the residence on the lot is consistent of the other residences along Roxbury Avenue and Hillside Avenue, and the use of the mitigating elements, green plantings, change in stairway direction contribute to a greater sense of urbanism and guide future development.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. § 73-71 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 makes each and every one of the required findings under Z.R. § 73-71 to *permit*, in an R4 zoning district, the legalization of a three-story, single-family residence that does not comply with the zoning requirements for parking, side yards, building access mitigation options, ground floor level mitigation options, and legality of a previous building footprint, contrary to Z.R. §§ 25-22(a), 64-332(c), 64-51, and 64-52; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: October 3, 2022”—Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: one side yard measuring with a minimum depth of 2.02 feet and another with a minimum depth of 1.13 feet; zero provided ground floor level mitigation elements; and zero parking spaces as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build It Back program;

THAT the applicant will provide the Board with a full set of approved plans upon DOB’s issuance of a certificate of occupancy for the subject building or other structure;

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 October 3, 2026;

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

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, October 3, 2022.

2022-55-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA.

PREMISES AFFECTED – 175 Father Capodanno Boulevard, Block 3122, Lot 118. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a special permit, pursuant to Z.R. § 73-71, to legalize, on a site within an R3-1 zoning district and a Lower Density Growth Management Area, the underlying bulk regulation for the replacement of a residence damaged/destroyed by Superstorm Sandy, on a property which is registered in the New York City Build it Back Program, that does not comply with the zoning requirements for permitted obstructions in open space/yards, required parking in a Lower Density Growth Management Area, and ground floor level mitigation options, contrary to Z.R. §§ 23-44 (a)(7), 25-22(b), and 64-52.

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

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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).

A public hearing was held on this application on September 13, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located on the north side of Father Capodanno Boulevard, between Alex Circle and Doty Avenue, in an R3-1 zoning district and a Lower Density Growth Management Area, in Staten Island. With approximately 25 feet of frontage along Father Capodanno Boulevard, 81 feet of depth, 2,010 square feet of lot area, the Premises are currently occupied by a two-story, single-family residence.

The Board has exercised jurisdiction since March 8, 2018, when, BSA Cal. No. 2016-2056-A, the Board waived its Rules of Practice and Procedure, authorized a waiver of General City Law § 35, and also waived the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Z.R. § 72-01(g) on condition that the proposed elevation or reconstruction apply with all applicable zoning district requirements; all other applicable laws, rules, and regulations be complied with; no building or other structure 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; if a proposed building or other structure is not within the exact footprint of the pre-Superstorm Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within five 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; if a proposed building or other structure is within the exact footprint of the pre-Superstorm Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within five feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; if a proposed building or other structure is not within the exact footprint of the pre-Superstorm 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-Superstorm Sandy building or other structure may remain within five feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within five 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; 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 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 907.2.1.1 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, have an exterior assembly that provides a two-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 approval be limited to the Build it Back program; the approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver be void as unnecessary; the applicant provide the Board with a full set of approved plans upon DOB's issuance of a certificate of occupancy for the subject building or other structure; DOB review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped; and 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.

The applicant seeks a special permit, under Z.R. § 73-71, to legalize the existing two-story, single-family, 1174.8 square feet residence. The applicant describes the residence as such: the main floor is approximately 15 feet wide by 38 feet long, fronted by a full-width roofed porch that is five feet deep; in the rear of the first floor, there is a rear stair that is approximately four feet deep; the main floor has the living room, a shared kitchen/dining area, and a half-bath, at 570 square feet; the second floor contains three bedrooms, laundry closet, and a full bathroom at 627.50 square feet; the second floor measures 41.83 feet long by 15 feet wide, creating an overhang above the first-floor rear stair landing; the perimeter wall measures 19 feet; and the building height is 24.7 feet; one side yard has a depth of 3.03 feet; and another side yard measures 4.6 feet.

The applicant further states that the existing eave and gutter assembly are 16 inches, however the maximum projection into the open space is 7.27", which would be the lesser distance. The applicant represents that the units are fabricated with an overhang (eave) of 12 inches, the gutter attached to the eave projects an additional four inches, and the eave, gutters, and leaders project into the required side yards.

The applicant states that it would not provide any parking spaces at the subject site because the site is an existing undersized, interior lot that did not have on-site parking prior to reconstruction. Furthermore, the applicant describes that because there is an existing light pole and fire

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hydrant directly in front of the property, and, as such, the applicant declares that there is no feasible way to provide on-site parking and a legal curb cut without relocating the light pole and fire hydrant due to the width of the lot. Lastly, the applicant states that there is no physical way to access the rear yard for parking or parking in the side yards due to the fact the existing side yards are three to five feet wide.

Additionally, the applicant seeks to waive the requirements of Z.R. § 64-52 for ground floor mitigation elements. The applicant represents that the required points cannot be achieved without major reworking of the site.

In subject R3-1 zoning district, pursuant to Z.R. § 23-44(a)(7) states “Eaves, gutters, or downspouts, projecting into such open space not more than 16 inches or 20 percent of the width of such open space, whichever is the lesser distance”. Additionally, the required parking for the subject site in a Lower Density Growth Management Areas is two, as per Z.R. § 25-22(b). Furthermore, Z.R. § 64-52 requires a Type 4 Blank Wall for residential buildings. Per Z.R. § 37-361, 83 square feet of Blank Wall is required. Blank Walls are required to be covered by mitigation elements outlined in Z.R. § 37-362.

As a preliminary matter, the Board states that the subject site meets the conditions outline in Z.R. § 73-71 (a), in that (1) the building complies with flood-resistant construction standards; (2) any modification of height and setback regulations related to increasing the permitted overall height shall not exceed the maximum height permitted by the applicable underlying district regulations by 10 percent, or 10 feet, whichever is greater, as measured from the reference plane; and any increase in the amount of permitted floor area shall be limited to no more than 20 percent of the floor area permitted on the zoning lot, and in no event more than 10,000 square feet of floor area. However, such restriction shall not apply to non-complying buildings with non-complying floor area, provided that the total floor area of the altered, enlarged, relocated, or reconstructed building, does not exceed the amount of existing floor area of such pre-existing building.

As per Z.R. § 73-71 (b)(1), the applicant states that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standard. The applicant represents that the existing irregularly shaped lot has approximately one half of the required lot area, over 38% less of the required lot width and 17% less of the required lot depth. As such, the applicant claims that the footprint is the minimum required to meet Build it Back Minimum Program Standards and New York City Building Code room sizes. The applicant further states that there would be practical difficulties in complying with flood resistant standards without such modifications and are the minimum modifications required.

As per Z.R. § 73-71(b)(2), the applicant notes and the Board finds that the proposal does not include a request to modify the minimum bulk regulations related to height;

thus, the finding is inapplicable in this case.

As per Z.R. § 73-71(b)(3), the applicant represents that the requested modification related to parking regulations to permit a reduction in the number of accessory off-street parking spaces and the change in the location of accessory off street parking spaces will facilitate an improved site plan; not cause traffic congestion; and not have undue adverse effects on residents, business, or community facilities in the surrounding area, as applicable including the availability of parking spaces for such uses. The applicant states that the existing site is an interior, undersized lot with less than the required lot width, lot depth and lot area, which did not provide on-site parking prior to reconstruction. The applicant points to the fact there is an existing fire hydrant and light pole directly in front of the property, and, as such, there is feasible way to provide on-site parking and a legal curb cut without relocation of the fire hydrant and light pole and no feasible way to access the rear yard for parking through the side yard because the side yards width is too narrow. However, the applicant notes that directly across from the site is a City park, boardwalk, beach area, and onsite parking. Furthermore, the applicant states that the elimination of the required on-site parking would facilitate an improved site plan and would not cause any additional traffic congestion; there will be no change in the pre-construction street and on-site parking conditions in the community.

As per Z.R. 73-71(b)(4), the applicant states that the relief requested would not alter the essential character of the neighborhood and would keep long-time residents in place and in harmony with the neighborhood goals. In support of this contention, the applicant provided a tax map which demonstrates that most of the residences within a 200-foot radius of 175 Father Capodanno Boulevard are similar: one- and two-story detached, semi-detached bungalows and multi-family townhouse residences blended with adjacent residential and commercial uses, public facilities, parks, and institutions, which were severely damaged by Superstorm Sandy and have been elevated or reconstructed to flood resistant construction and elevations.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. § 73-71 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 makes each and every one of the required findings under Z.R. § 73-71 to *permit*, in an R3-1 zoning district and a Lower Density Growth Management Area, the legalization of a two-story, single-family residence that does not comply with the zoning requirements for permitted obstructions in open space, required parking spaces, and ground floor level mitigation elements, contrary to Z.R. §§ 23-44(a)(7), 25-22(b), and 64-52; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: October 3, 2022”—Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as

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follows: a maximum of 16 inches of allowable projections into the required rear yard; zero provided ground floor level mitigation elements; and zero parking spaces;

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-Superstorm Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within five 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-Superstorm Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within five 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-Superstorm 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-Superstorm Sandy building or other structure may remain within five feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within five 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 two-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 this approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver

shall be void as unnecessary;

THAT the applicant will provide the Board with a full set of approved plans upon DOB's issuance of a certificate of occupancy for the subject building or other structure;

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

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 October 3, 2026;

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

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, October 3, 2022.

2022-56-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Special Permit (§73-71) to waive underlying bulk regulations for the replacement of a home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program (legalization application). R3-1 ZD, LDGMA.

PREMISES AFFECTED – 231 Moreland Street, Block 3738, Lot 30. Borough of Staten Island

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a special permit, pursuant to Z.R. § 73-71, to legalize, in an R3-1 zoning district and a Lower Density Growth Management Area, the underlying bulk regulation for the replacement of a residence damaged/destroyed by Superstorm Sandy, on a property which is registered in the New York City Build it Back Program, that does not comply with the zoning requirements for front yard and rear yard, contrary to Z.R. §§ 23-45 and 23-47.

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

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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).

A public hearing was held on this application on September 13, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located on the west side of Moreland Street, between Lincoln Avenue and Midland Avenue, in an R3-1 zoning district and a Lower Density Growth Management Area, in Staten Island. With approximately 47 feet of frontage along Moreland Street, 88 feet of depth, 4,181 square feet of lot area, the Premises are currently vacant.

The applicant seeks a special permit, under Z.R. § 73-71, to permit the legalization of a two-story, two-family, 2,356 square feet (.56 FAR) residence with a 1,178 square-foot footprint; a perimeter wall height of 16'-4"; a ridge height of 39'-0", measured from Flood Resistant Construction Elevation ("FRCE" = 14.0 feet), as per Z.R. § 64-131; a lot coverage of 28%; one side yard measuring five feet; another side yard measuring 18'-0"; a front yard with a depth of 12.31 feet; and a rear yard with a depth of 25'-7" at the first floor and above. The applicant represents that a 2,606 square feet (.62 FAR) residence with a 1,303 square feet footprint, 31% lot coverage, a rear yard with a depth of 21' -10" at the first floor and above, a front yard with a depth of 23.60 feet, one side yard measuring one foot, and another side yard measuring 16 feet was demolished at the subject lot.

In the subject R3-1 zoning district, the minimum required rear yard is 30', as per Z.R. § 23-47, and the minimum required front yard is 15', as per Z.R. § 23-45.

The applicant proposes to waive Z.R. § 23-47 to legalize the existing rear yard of 25'7" and proposes to waive Z.R. § 23-45 to legalize the existing front yard of 12'4".

As a preliminary matter, the Board states that the subject site meets the conditions outline in Z.R. § 73-71 (a), in that (1) the building complies with flood-resistant construction standards; (2) any modification of height and setback regulations related to increasing the permitted overall height shall not exceed the maximum height permitted by the applicable underlying district regulations by 10 percent, or 10 feet, whichever is greater, as measured from the reference plane; and any increase in the amount of permitted floor area shall be limited to no more than 20 percent of the floor area permitted on the zoning lot, and in no event more than 10,000 square feet of floor area. However, such restriction shall not apply to non-complying buildings with non-complying floor area, provided that the

total floor area of the altered, enlarged, relocated, or reconstructed building, does not exceed the amount of existing floor area of such pre-existing building.

As per Z.R. § 73-71 (b)(1), the applicant represents there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards. Specifically, the applicant states that because the existing interior lot has a depth of 88 feet which is 12 feet less than the typical lot depths of 100, there would be practical difficulties in complying with flood resistant standards without such modifications and are the minimum modifications required.

As per Z.R. 73-71 (b)(2), any modification related to an increase in the amount of permitted floor area is the minimum necessary to address practical difficulties in retaining pre-existing habitable space. The applicant is not seeking any relief for an increase in floor area under this request, and thus, the finding is inapplicable in this case.

As per Z.R. § 73-71(b)(3), the applicant notes and the Board finds that the proposal does not include a request to modify the minimum required parking; thus, the finding is inapplicable in this case.

As per Z.R. § 73-71(b)(4), the applicant states that the relief requested would not alter the essential character of the neighborhood and would keep long-time residents in place and in harmony with the neighborhood goals. The applicant declares that most of the residences within a 200-foot radius of the subject site are similar: one and two story detached, semi-detached bungalows, attached townhouse residences blended with commercial uses on Midland Avenue. Furthermore, the applicant states that many of the adjacent residences were severely damaged by Superstorm Sandy and have been elevated or reconstructed to flood resistant construction and elevations and were participants in the Build It Back program. Additionally, the applicant describes that the proposed residence design follows the urban context of Midland Beach and contributes to the improvement of the essential character of the neighborhood. In support of this contention, the applicant submitted the site photographs of the subject site and surrounding neighborhood, illustrating that the proposed reduction in the required front yard is approximately three feet less than the required depth of 15 feet, and several adjacent properties have front yard depths of approximately eight feet, which is approximately seven feet less than the required depth.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. § 73-71 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 makes each and every one of the required findings under Z.R. § 73-71 to *permit*, in an R3-1 zoning district and a Lower Density Growth Management Area, the legalization of a two-story, two-family residence that does not comply with the zoning requirements for front yard and rear yard, contrary to Z.R. §§ 23-45 and 23-47; *on*

MINUTES

condition that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: October 3, 2022”—Nine (9) sheets; and on further condition:

THAT the bulk parameters of the building shall be as follows: a front yard measuring 12'-4" feet and a rear yard measuring 25'-7" at the first floor and above, as illustrated on the Board-approved drawings;

THAT the building shall comply with flood-resistant construction standards;

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 October 3, 2026;

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

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, October 3, 2022.

CORRECTION: This resolution adopted on October 3, 2022, under Calendar No. 2022-57-A, is hereby corrected to read as follows:

2022-57-A

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application August 1, 2022 – Legalization of the reconstruction of a single family home damaged/destroyed by Hurricane Sandy, on a property which is registered in the NYC Build it Back Program not fronting on a legally mapped street contrary to General City Law §36. Sheepshead Bay Courts, R4-1 ZD.

PREMISES AFFECTED – 24A Mesereau Court, Block 8797, Lot 101. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application to legalize the reconstruction of a single-family residence which was damaged/destroyed by Superstorm Sandy, on a property which is registered in the New York City Build it Back Program, not fronting on a legally mapped street, contrary to General City Law (“GCL”) § 36. A public hearing was held on this application

on September 13, 2022, after due notice by publication in *The City Record*, and then to decision on October 3, 2022.

The Premises are located on the west side of Mesereau Court, between Shore Parkway and Dunne Place, within an R4-1 zoning district, in Brooklyn. With approximately 47 feet of frontage along Mesereau Court, 55 feet of depth, and 2,345 square feet of lot area, the Premises are occupied by a one-story, detached, single-family residence.

The Board has exercised jurisdiction over the Premises since August 21, 2018, when, BSA Cal. No. 2018-134-BZ, the Board waived its Rules of Practice and Procedure, and permitted, pursuant to Z.R. § 64-92, on a site within an R4-1 zoning district, the reconstruction of a single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards, open space, and lot coverage, contrary to Z.R. §§ 24-35, 23-461(a), 23-47, 23-47, 23-142, 64-A351, 64-A352, 64-A353, and 64-A311, on condition that all work substantially conform to the drawings filed with the application; the bulk parameters of the building be as follows: set back 19 feet from the northern lot line, set back 10 feet from the western lot line with an exterior stair and landing to the north, an exterior stair and landing to the east and a roof overhang to the east, as illustrated on the BSA-approved plans; the building have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed have a floor assembly that provides a two-hour fire resistance rating; the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; this approval be limited to the Build it Back program; 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 21, 2022; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

The applicant seeks to legalize an existing three-story residence with a perimeter wall height of 18'-5"; a ridge height of 24'-4 1/2"; an FAR of .38; and lot coverage of 23%. In the subject zoning district, the maximum permitted perimeter wall height is 19' perimeter wall height, 25' maximum height, as per Z.R. § 64-A36.

The applicant states that in order to modify the previously existing residence, it had to raise the first floor of the residence to a higher elevation. The applicant represents that the reconstructed residence is in keeping with the character of the neighborhood, as a significant number of residences in the Sheepshead Bay Courts neighborhood are also participating in the Build it Back program by being

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elevated or reconstructed and are also one- and two-story bungalow-style residences. In support of this contention, the applicant submitted a tax map, which demonstrates that the majority of properties are between 23 to 25 feet wide and 55 to 70 feet deep, creating both narrow and shallow lots.

The applicant requests a waiver of General City Law § 36 to legalize the reconstruction of this residence as zoning compliance with flood resistant construction standards is required. The applicant states that as per GCL § 36, there would be practical difficulty in complying with flood resistant construction standards without seeking the requested relief. The applicant represents that the modifications made to the residence are the only and minimum necessary modifications that would allow an appropriate building in compliance with flood resistant construction standards. Furthermore, the applicant states that the residence has been reconstructed in its approximate pre-demolition location and is not creating additional increase in the footprint, noting that the lot coverage has been reduced from 35% to 23%

Based upon its review of the record, the Board has determined that the amendment to the conditions of the original grant, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby amend the resolutions dated August 21, 2018, so that as amended, this portion of the resolution shall read: “the Board authorizes a waiver of GCL § 36 for the legalization of the reconstructed residence, *on condition* that all work and site conditions shall conform to drawings filed with this application marked ‘Board Approved: October 3, 2022’ — Five (5) sheets; and *on further condition*

THAT the bulk parameters of the building shall be as follows: set back 18’-10 3/4” feet from the northern lot line, set back 10 feet from the eastern lot line, set back 4’-10 3/4” from the southern lot line and set back 9’-10 3/4” feet from the western lot line with an exterior stair and landing to the north, an exterior stair and landing to the east and a roof overhang to the east, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a two-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT 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 October 3, 2026;

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 plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 3, 2022.

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for a adjourned hearing.

2019-264-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, owner.

SUBJECT – Application September 11, 2019 – Variance (§72-21) to permit the development of school (UG 3) (Congregation Lev Bais Yaakov) contrary to ZR §33-121 (FAR) and ZR §33-431 (height of front wall and sky exposure). C1-2/R4 zoning district.

PREMISES AFFECTED – 3568 Nostrand Avenue, Block 7386, Lot 129, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – 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.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – 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.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2021-42-BZ

APPLICANT – Law Office of Lyra J. Altman, for Project L29 LLC, owner.

SUBJECT – Application June 11, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Ohr Shraga D’Veretzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). R2 zoning district.

PREMISES AFFECTED – 2901 Avenue L, Block 7629, Lot(s) 6 and 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M. for continued hearing.

2021-47-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hilda Lovera, owner.

SUBJECT – Application July 27, 2021 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-45 (required front yard). R3-2 zoning district.

PREMISES AFFECTED – 2100 Hermany Avenue, Block 3685, Lot 9, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M. for continued hearing.

PUBLIC HEARINGS MONDAY-TUESDAY, OCTOBER 3-4, 2022 2:00 P.M.

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

ZONING CALENDAR

2020-50-BZ

APPLICANT – Law Office of Lyra J. Altman, for Haim Haddad, owner.

SUBJECT – Application June 8, 2020 – 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.

PREMISES AFFECTED – 2328 Olean Street, Block 7677, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M. for continued hearing.

2021-59-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Union Turnpike, LLC, owner; Starbucks Corporation, lessee.

SUBJECT – Application October 3, 2022 – Special Permit (§73-243) to permit an accessory drive-through accessory to an Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-23. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 161-09 Union Turnpike, Block 6831, Lot 118, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to January 9-10, 2023 at 10 A.M. for continued hearing.

2021-83-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Etzhaim Inc., owner.

SUBJECT – Application December 2, 2021 – Variance (§72-21) to permit the construction of a House of Worship contrary to ZR §24-111 (floor area), ZR §24-35 (side yards) and ZR §25-30 (parking). R1-2 zoning district.

PREMISES AFFECTED – 80-74 188th Street, Block 7259, Lot 26, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to January 9-10, 2023 at 10 A.M. for continued hearing.

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2022-31-BZ

APPLICANT – Fox Rothschild LLP, for 337 Garage, LLC, owner; The Browning School, lessee.

SUBJECT – Application May 31, 2022 – Variance (§72-21) to permit the conversion and enlargement of an existing building to facilitate a UG 3 school (The Browning School) contrary to underlying rear yard and height regulation. C2-5/R8B zoning district.

PREMISES AFFECTED – 337 East 64th Street, Block 1439, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 5-6, 2022 at 10 A.M. for continued hearing.

2022-49-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 73rd Realty LLC, owner.

SUBJECT – Application July 29, 2022 – Re-instatement (11-41) of a previously approved variance which permitted the operation of a knitting mill (UG 17B) with accessory storage which expired on March 19, 2002; Change of use to a UG(17A) contracting establishment. Extension of Time to Obtain a Certificate of Occupancy which expired on March 19, 1993; Waiver of the Board’s Rules of Practice and Procedures. R4-1 zoning district.

PREMISES AFFECTED – 71-34 73rd Street, Block 3690, Lot 22, Borough of Queens.

COMMUNITY BOARD #5Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 14-15, 2022, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

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October 28, 2022

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2022-80-BZ

1258 East 29th Street, Block 7646, Lot(s) 0069, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R2 zoning district. R2 district.

2022-81-BZ

204-34 45th Drive, Block 7303, Lot(s) 0018, Borough of **Queens, Community Board: 11**. Variance (§72-21) to permit the construction of a cellar and two-story, one-family residential building that does not provide a required front yard pursuant to ZR § 23-45. R3-1 zoning district. R3-1 district.

2022-82-BZ

1308 Edward L. Grant Highway, Block 2871, Lot(s) 0069, Borough of **Bronx, Community Board: 4**. Special Permit (§73-49) to permit 15 accessory off -street parking spaces to be located upon the roof of a proposed medical center (UG 4) contrary to ZR 44-11. M1-2 zoning district. M1-2 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, DECEMBER 5-6, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, December 5th, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday December 6th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

319-53-BZ

APPLICANT – William Consuegra by Majed ElJamal, for 222nd Street Realty, owner.

SUBJECT – Application August 23, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Repair Facility (UG 16B) which expired on January 31, 2021, Waiver of the Board's Rules of Practice and Procedures. Amendment for the parking spaces. R5 zoning district.

PREMISES AFFECTED – 1135 East 222nd Street aka 3651 Eastchester Road, Block 4900, Lot 2, Borough of Bronx.

COMMUNITY BOARD #12BX

295-57-BZ

APPLICANT – Jung H. Choi, for Aronoff Limited Partnership, owner.

SUBJECT – Application August 17, 2021 – Extension of Term (§11-411) for the continued operation of an Automotive Service Station (UG 16B) which expired on August 7, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, Block 6672, Lot 80, Borough of Queens.

COMMUNITY BOARD #4Q

2017-232-A

APPLICANT – Robert M. Scarano Jr. for Neil Simon of SHS Richmond Terrace LLC, owner.

SUBJECT – Application September 2, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved General City Law §36 waiver permitting the development of a retail public self-storage building not fronting on a legally mapped street which expired on July 17, 2022; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-306-BZ

APPLICANT – Law Office of Lyra J. Altman, for Stella Alfaks and Devi Alfaks, owners.

SUBJECT – Application August 3, 2021 – Amendment of a previously approved Special Permit (§73-622) permitting the enlargement of the existing single family home contrary to ZR §23-47 (rear yard). R5 zoning district.

PREMISES AFFECTED – 1977 East 14th Street, Block 7293, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

2019-96-A thru 2019-155-A

APPLICANT – Rampulla Associates Architects, LLP, for ELOC FTK, LLC, owner.

SUBJECT – Application May 23, 2019 – To permit the construction of 48 two family and 5 single family homes not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District.

PREMISES AFFECTED – Bluebelt Loop, Cole Street, Block(s) 7558, 7564, 7566 & 7562, Lot (s) 53, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 111, 110, 109, 108, 107, 41, 106, 40, 105, 39, 104, 38, 103, 37, 102, 36, 101, 35, 100, 98, 99, 34, 97, 33, 96, 32, 95, 31, 94, 130, 193, 92, 91, 190, 25, 26, 23, 27, 22, 28, 21, 29, 20, 19, 18, 17, 16, 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-62-A

APPLICANT – Carter Ledyard & Milburn LLP, for Onboard Hospitality LLC, owner.

SUBJECT – Application August 23, 2022 – 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 adoption of a zoning text amendment. M1-6 zoning district

PREMISES AFFECTED – 34 West 38th Street, Block 839, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #5M

CALENDAR

ZONING CALENDAR

2020-51-BZ, 2020-53-BZ, 2020-52-A & 2020-54-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Nord, LLC, owner.

SUBJECT – Application June 12, 2020 – Variance §72-21 to permit the development of a self-storage warehouse (UG 16) contrary to ZR 22-10; located on a site not fronting on a mapped street contrary to General City Law §36. M1-1 and R3-2 zoning district.

PREMISES AFFECTED – 105 Ridgeway Avenue, Block 2610, Lot 150, Borough of Staten Island.

COMMUNITY BOARD #2SI

2022-15-BZ

APPLICANT – Rampulla Associates Architects, for 5 Little Clove Road LLC, owner.

SUBJECT – Application February 28, 2022 – Special Permit (§73-126): to permit the development of an ambulatory diagnostic or treatment health care facility. R3X Lower Density Growth Management Area.

PREMISES AFFECTED – 5 Clove Road, Block 661, Lot(s) 28, 31, 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

Shampa Chanda, Acting Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY, OCTOBER 17-18, 2022
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative:.....0

Abstain: Commissioner Yoon.....1

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, under Z.R. § 11-411, which permitted the use of the Premises as a gasoline service station with accessory use and expired on May 7, 2014.

A public hearing was held on this application on March 8, 2021, after due notice by publication in *The City Record*, with continued hearings on April 26, 2021, May 24, 2021, April 26, 2022, and July 18, 2022, and then to decision on October 17, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 12, Queens, recommends approval of this application on condition that there be no sales of cars, a list of the number of employees be provided, and upgrades to the Premises be performed.

The Premises are located on the southwest corner of Farmers Boulevard and Baisley Boulevard, partially within an R5D (C1-3) zoning district and partially within an R3A zoning district, in Queens. With approximately 192 feet of frontage along Farmers Boulevard, 109 feet of frontage along Baisley Boulevard, and 13,836 square feet of lot area, the Premises are occupied by an existing gasoline service station with a one-story accessory building (1,605 square feet of floor area) with three service bays, office, restroom, and storage.

The Board has exercised jurisdiction over the Premises since January 27, 1959, when, under the subject calendar

number, the Board granted a variance, for a term of 15 years, to permit the Premises to be occupied as a gasoline service station and lawful accessory uses.

Subsequently, the grant has been amended and extended by the Board at various times. Most recently, on November 29, 2005, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term for ten years, to expire May 7, 2014, and to permit minor plan modifications, to increase the size of the Baisley Boulevard curb cut farthest from Farmers Boulevard from 23'-0" in width to 41'-0", and the size of the Baisley Boulevard curb cut closest to Farmers Boulevard from 24'-0" to 30'-0", on condition that the term of the grant be for ten years, to expire on May 7, 2014; on-site parking spaces be used only for vehicles awaiting service; all graffiti on the Premises be removed; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; all signage comply with applicable C1 district regulations; all interior partitions and exits be as approved by the Department of Buildings (“DOB”); the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, DOB ensure compliance with all applicable provisions of the Zoning 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 variance having expired, the applicant now seeks an extension. Because this application was filed more 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)(3)(i) of the Board’s Rules to permit the filing of this application. Pursuant to the Board’s Rules, the applicant provided photographs and utility statements to demonstrate continuous use of the Premises from the expiration of the term through the filing of the application and states that absent a waiver of the Board’s Rules, the business that has operated at the Premises for several decades would have to cease operation and would suffer significant financial hardship.

The applicant represents that the Premises continue to operate in compliance with the Board’s approval and no new improvements proposed to the Premises except for the following maintenance improvements: all existing asphalt repaired as needed with asphalt filler and sealed; refuse containers relocated away from adjoining neighbors and within an enclosure; vacuum and bollards removed; air pump at the north side of the property removed; noise barrier provided at the adjacent south property line in front of the neighbor’s window and on the west property line in front of the three parking spaces for vehicles awaiting service; repaired bollards with chain rope to provide a boundary at property line to maintain parking within property limits at the southern property line fronting Farmers Boulevard. The applicant further states that the Premises operate 24 hours per day, 7 days per week, as a

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gasoline service station; the repair services are open 8:00 a.m. to 6:00 p.m., Monday through Saturday, and closed on Sunday. The Premises maintain seven off-street parking spaces for vehicles awaiting service and fuel delivery occurs once every two to three days.

Over the course of hearings, the Board questioned whether the Premises was effectively screened from the nearby residential uses, specifically with regard to the trash enclosure, landscaping, and privacy fencing. In response, the applicant demonstrated that the window of the adjacent residence does not have a view of the side yard and the new trash enclosure; the rear wall of the adjacent residence is nearly concurrent with the face of the gasoline service station and the location of the window on the side wall of the residence is beyond where the new trash enclosure is proposed. As to landscaping, the applicant states that above-ground planters were utilized along the south property line as in-ground planting in that location would require the costly removal of an existing slab and foundation supporting a sign; however, all other new perimeter planting at the Premises is in-ground. Further, the applicant represents that, pursuant to the Board's November 29, 2005, approval, 100% opaque fencing, in lieu of landscaping, was provided at the south and west property lines. Additionally, the applicant repaired the fencing where necessary.

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 27, 1959 as amended through November 29, 2005, so that as amended this portion of the resolution shall read: "to permit the operation of the Premises as a gasoline service station with accessory uses for a term of ten years, to expire on May 7, 2024, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked 'Board Approved October 17, 2022'—Eleven (11) sheets; and *on further condition*:

THAT the term of the variance shall expire May 7, 2024;

THAT no vehicle sales shall be permitted at the Premises;

THAT there shall be no cars parked on the sidewalk at any time;

THAT all lighting on the lot line adjacent to residential uses shall be shielded from direct view and to minimize any adverse effect on nearby residential uses;

THAT landscaping shall be provided as per the Board-approved plan, replaced as necessary to be maintained in first-rate condition;

THAT on-site parking spaces shall be used only for vehicles awaiting service;

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

THAT all signage shall comply with applicable C1 district regulations;

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 523-58-BZ"), shall be obtained within 18 months, by April 17, 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, October 17, 2022.

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 – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, which permitted the continued use of the Premises as an automotive service station, which expired on July 27, 2020.

A public hearing was held on this application on October 5, 2020, after due notice by publication in *The City Record*, with continued hearings on January 11, 2021, April 26, 2021, June 14, 2021, September 23, 2021, January 10, 2022, April 11, 2022, and September 12, 2022, and then to decision on October 17, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area. Community Board 2, Staten Island, waives their recommendation of this application.

The Premises are located on the southeast corner of Hylan Boulevard and Reid Avenue, within an C2-1 (R3-2) zoning district, on Staten Island. With approximately 130 feet of frontage along Hylan Boulevard, 100 feet of frontage

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a long Reid Avenue, and 13,000 square feet of lot area, the Premises are occupied by an existing automotive service station with an accessory one-story convenience store and automotive repair building (1,614 square feet of floor area with 244.7 square feet of sales area).

The Board has exercised jurisdiction over the Premises since November 14, 1961 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station, lubritorium, car washing, minor motor vehicle repairs with hand tools only, sale of accessories, and the parking of more than five motor vehicles, for a term of 20 years. Subsequently, the grant has been amended and the term extended by the Board at various times.

On June 9, 1992, under the subject calendar number, the Board granted an extension of term for ten years from the expiration of the prior grant, and permitted the replacement of the existing gasoline pumps and canopy, an enlargement to the existing building to accommodate an attendant's booth, and the rearrangement of the curb cut along Reid Avenue.

On December 9, 2003, under the subject calendar number, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire November 14, 2011.

On July 27, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years from the date of the grant, to expire on July 27, 2020, on condition that the conditions appear on the certificate of occupancy; a new certificate of occupancy be obtained by July 27, 2011; signage comply with C2 zoning district regulations; 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 of the variance having expired, the applicant now seeks an extension.

The applicant represents that the Premises continue to operate as a 24-hour gasoline service station and convenience store; the automotive repair is operated between 8:00 a.m. and 6:00 p.m., Monday through Friday, between 8:00 a.m. and 1:00 p.m. on Saturday, and closed on Sunday. The applicant states that all repair work occurs within the fully enclosed building.

Over the course of hearings, the Board questioned whether the Premises maintained effective screening and controls to limit the adverse impacts from the presence of the air pump and vacuum, trash enclosure, and lighting near residential uses. In response, the applicant revised the plans to demonstrate the relocation of the air pump and vacuum, proposed a six-foot-tall masonry trash enclosure with steel doors, and added notes on the plans to install light shields on all lighting at the Premises' lot lines abutting residential uses. The applicant further provided an enhanced

landscaping plan to more effectively screen the Premises from nearby residential uses.

The Fire Department states, by letter dated January 5, 2021, that a review of their records indicates that the Premises are current with Fire Department 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 *amend* the resolution, dated November 14, 1961, as amended through July 27, 2010, so that as amended this portion of the resolution shall read: "to extend the term for ten years, to expire on July 27, 2030, *on condition* that all work, site conditions, and operations shall substantially conform to drawings filed with this application marked "Board Approved October 17, 2022" – Eight (8) sheets; and on *further condition*:

THAT the term shall expire on July 27, 2030;

THAT all lights at the property line adjacent to residential uses shall be shielded from direct view and to minimize any adverse effects on nearby residential uses;

THAT improvements to the Premises shall be completed prior to obtaining a certificate of occupancy;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 803-61-BZ"), shall be obtained within 18 months, by April 17, 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, October 17, 2022.

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548-69-BZIV

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

SUBJECT – Application July 29, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expires on May 25, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on June 6, 2018; Waiver of the Board’s Rules of Practice and Procedures. C2-3/R6B zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 72-21, which permitted the use of the Premises as an automotive service station (Use Group (“UG”) 16B with accessory convenience store and expired on May 25, 2021.

A public hearing was held on this application on November 29, 2021, after due notice by publication in *The City Record*, with continued hearings on May 9, 2022, and September 12, 2022, and then to decision on October 17, 2022. Commissioner Sheta performed an inspection of the Premises and surrounding area. Community Board 3, Queens, recommends approval of this application.

The Premises are bounded by Astoria Boulevard to the north, 107th Street to the west, and 108th Street to the east, within an R6B (C2-3) zoning district, in Queens. With approximately 200 feet of frontage along Astoria Boulevard, 104 feet of frontage along 107th Street, 60 feet of frontage along 108th Street, and 14,719 square feet of lot area, the Premises are occupied by an existing automotive service station with an accessory one-story convenience store (449 square feet of floor area with 288 square feet of sales area).

The Board has exercised jurisdiction over the Premises since May 25, 1971, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the construction and maintenance of an automotive service station with accessory signs, which expired on May 25, 1981. The variance restricted the automotive service station to the pumping of gasoline with neither automotive service nor repair.

On May 26, 1981, under the subject calendar number, the Board extended the term of the variance for another term of ten years, expiring May 25, 1991.

On March 30, 1982, under BSA Cal. No. 903-81-A, the Board granted an appeal from a decision of the Queens Borough Superintendent and permitted a change to self-service gasoline sales at the Premises, with conditions, for a term of five years, which expired on March 30, 1987.

On March 30, 1982, under the subject calendar number, the Board amended the variance resolution to permit the change to a “self-serve” gasoline station for a term of five years, expiring March 30, 1987, to relocate the gasoline pump islands, construct a steel canopy extending to the office, and alter the accessory building.

On July 13, 1982, under the subject calendar number, the Board amended the variance resolution to permit the relocation of gasoline pump islands, omit the previously approved alterations to the existing accessory building, to omit a portion of the steel canopy, and to install a new attendant kiosk on the center gasoline pump island.

On July 13, 1982, under BSA Cal. No. 903-81-A, the Board amended its resolution to reflect the requirements adopted by the Board with regards to the variance on the same day.

On July 11, 1990, under the subject calendar number, the Board amended the variance resolution to legalize certain alterations to the site plan, including a change in the size of the canopy, the installation of new islands and the installation of an additional curb cut on Astoria Boulevard.

On February 4, 1992, under the subject calendar number, the Board extended the term of the variance for a term of ten years from May 25, 1991, expiring May 25, 2001.

On August 12, 2003, under the subject calendar number, the Board amended the variance to legalize the change in use of an accessory building on the premises from storage to a convenience store and to extend the term of the variance for an additional ten years, expiring on May 25, 2011.

On January 20, 2013, under the subject calendar number, the Board granted an extension of term for a period of ten years, expiring on May 25, 2021, on condition that landscaping be maintained.

On December 6, 2016, under the subject calendar number, the Board further amended the variance to permit the enlargement of the existing convenience store and other alterations to the site plan on condition that the Premises be maintained free of litter, debris and graffiti; landscaping be maintained, and replaced as necessary, in accordance with the BSA-approved plans; the existing temporary shed, then used for storage, be removed following construction of the convenience-store enlargement; all signage comply with C1 district regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within 18 months; 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.

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The applicant represents that the 186 square foot enlargement of the accessory convenience store, pursuant to the Board's 2016 approval, was not undertaken and a revised certificate of occupancy was not obtained. Accordingly, the existing accessory building remains with 449 square feet of floor area. The applicant submits that the Premises continue to operate as a gasoline service station, 24 hours per day, seven days per week, with six parking spaces.

Over the course of hearings, the Board questioned whether the Premises maintained effective screening and controls to limit the adverse impacts from the lighting and trash storage at the Premises on nearby residential properties. In response, the applicant submits that the height of a light pole was reduced, and light shields will be maintained to prevent light spill on nearby residential properties and to minimize any further adverse effects. Further, the applicant represents that the Premises is screened from residences in the rear with landscaping and six-foot chain link fence with privacy slats. The applicant further demonstrated repair of the trash enclosure fence and the Premises' stairs in response to Board comments. Additionally, the applicant submits an operational plan for the Premises detailing the following: a security camera system is utilized to view customer vehicles via a closed-circuit television monitor in the attendant area so that customers can be observed; an attendant monitors both the Premises and the sidewalk during normal business hours to ensure vehicles visiting the station will only park on site in designated parking stalls and not on the sidewalk; if vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e. side street) until such time an on-site parking stall becomes available; the corporate operator will monitor the site and notify site operators to remove items, including tires, if the corporate operator observes items being sold outside and will ask that they be placed inside the building. Further, the operational plan states that a site maintenance advisor from the corporate operator visits the site at least once a month; if the site is not being managed per the BSA-approval, the site maintenance advisor will give the operator a chance to correct and will inform the operator that they are out of compliance; the corporate operator will correct the non-compliances as necessary and bill the site operator if the operator does not work to come into compliance.

The Fire Department states, by letter dated November 18, 2021, that a review of their records indicates that the Premises are current with Fire Department 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 and extension of time to obtain a certificate of occupancy is

appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated May 25, 1971, as amended through December 6, 2016, so that as amended this portion of the resolution shall read: "to extend the term for ten years, to expire on May 25, 2031, *on condition* that all work, site conditions, and operations shall substantially conform to drawings filed with this application marked "Board Approved October 17, 2022" – Seven (7) sheets; and *on further condition* :

THAT the term shall expire on May 25, 2031;

THAT the Premises shall be maintained free of litter, debris and graffiti;

THAT landscaping shall be maintained, and replaced as necessary, in accordance with the BSA-approved plans;

THAT all signage comply with C1 district regulations;

THAT the operational plan shall be complied with;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 548-69-BZ"), shall be obtained within 18 months, by April 17, 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, October 17, 2022.

216-13-BZIV

APPLICANT – Rampulla Associates Architects, LLP, for Barclay Boardwalk, LLC, owner.

SUBJECT – Application June 21, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the development of a one (1) story Eating & Drinking Establishment (UG 6) which expired on June 24, 2022. R3X Special Richmond District.

PREMISES AFFECTED – 750 Barclay Avenue, Block 6397, Lot(s) 7, 9, 12, 18 (tent.7), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative.....0

THE RESOLUTION –

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This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously-granted variance, under Z.R. § 72-21, which permitted the reconstruction of a new eating and drinking establishment (Use Group (“UG”) 6) and expired on June 24, 2022.

A public hearing was held on this application on October 3, 2022, after due notice by publication in *The City Record*, and then to decision on October 17, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding area.

The Premises are bounded by Barclay Avenue to the east, Boardwalk Avenue to the south, and 1st Court to the west, within an R3X zoning district and in the Special South Richmond Development District, on Staten Island. With approximately 180 feet of frontage along Barclay Avenue, 102 feet of frontage along Boardwalk Avenue, 161 feet of frontage along 1st Court, and 17,029 square feet of lot area, the Premises are occupied by a proposed one-story eating and drinking establishment with 24 off-street parking spaces.

The Board has exercised jurisdiction over the Premises since June 24, 2014, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the construction of a one-story building occupied as an eating and drinking establishment (UG 6), contrary to Z.R. §§ 22-00 and 52-34, on condition that the bulk parameters of the enlarged building be as follows: a total floor area of 4,890 square feet (0.28 FAR); a total height of 31'-4", and a minimum of 24 unattended parking spaces or 41 attended spaces, as shown on the Board-approved plans; the hours of operation be limited to Monday through Thursday, 12:00 p.m. to 10:00 p.m.; Friday and Saturday, 12:00 p.m. to 12:00 a.m.; and Sunday, 10:00 a.m. to 10:00 p.m.; there not be any music or amplified sound associated with the outdoor operation of the restaurant; attended parking be required on Fridays and Saturdays; signage on the Premises comply with C1 district regulations, as shown on the BSA-approved plans; all fencing and landscaping be installed and maintained, as shown on the BSA-approved plans; the parking layout be as reflected on the BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed 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 June 24, 2014, under BSA Cal. No. 217-13-A, the Board granted a waiver of General City Law (“GCL”) § 35 to permit the construction of the proposed building under BSA Cal. No. 216-13-BZ to be located partially within the bed of Boardwalk Avenue, a mapped street, on condition that DOB review and approve plans associated with the Board’s approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped; the

approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); DOB review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; 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.

By letter dated August 20, 2015, under the subject calendar number and BSA Cal. No. 216-13-A, the Board approved the following modifications to the Premises as in substantial compliance with the Board’s June 24, 2014, variance approval: 1) a minor shift of the proposed building to avoid the Coastal Erosion Hazard Area (the “CEHA”) shown on the site plan submitted therewith; 2) the rearrangement of the parking lot and relocation of the curb cut to accommodate the minor shift of the proposed building; 3) modified plans to show “NAVD88 Conversion” in addition to the “Flood Hazard Condition, Richmond Datum”; 4) raising the proposed building 1'-0" for freeboard; 5) the relocation of a stairway to the attic of the building as necessitated by a partial rearrangement of the first floor of the building in order to accommodate egress from the northwest side thereof; and, 6) a modification of the roof of the building to create a flat area for rooftop HVAC units.

On November 19, 2019, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the variance to permit an extension of time to complete construction for four years, by June 24, 2022, on further condition that a certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 216-13-BZ”) be obtained within four years, by June 24, 2022, and all conditions from prior resolutions not specifically waived by the Board remain in effect.

The time to complete construction and the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that, since the Board’s 2019 extension, construction efforts were delayed by the COVID-19 global health pandemic construction shutdown as well as related financial constraints on the restaurant industry which caused further construction delays to the operator. The applicant submits a construction timeline and estimates that, after the Board’s approval, permits will be obtained within eight months, construction may begin thereafter and will be signed off and a certificate of occupancy obtained within four years. Accordingly, the applicant seeks a four-year extension of time to complete construction and obtain a certificate of occupancy.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated June

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24, 2014, as amended through November 19, 2019, so that as amended this portion of the resolution shall read: “to extend the time to complete construction and obtain a certificate of occupancy for four years, by October 17, 2026, on condition:

THAT construction shall be completed by October 17, 2026;

THAT the following shall be the bulk parameters of the proposed enlarged building: a total floor area of 4,890 square feet (0.28 FAR); a total height of 31'-4", and a minimum of 24 unattended parking spaces or 41 attended spaces, as shown on the Board-approved plans;

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

THAT there shall not be any music or amplified sound associated with the outdoor operation of the restaurant;

THAT attended parking shall be required on Fridays and Saturdays;

THAT signage on the Premises shall comply with C1 district regulations, as shown on the BSA-approved plans;

THAT all fencing and landscaping shall be installed and maintained, as shown on the BSA-approved plans;

THAT the parking layout shall be as reflected on the BSA-approved plans;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 216-13-BZ”), shall be obtained within four years, by October 17, 2026;

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 17, 2022.

102-15-A

APPLICANT – Eric Palatnik, P.C., for 1088RA10309, LLC, owner.

SUBJECT – Application July 6, 2022 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a previously approved waiver of General City Law §35 and ZR §107-461 pursuant to ZR §72-01(g) which expired on August 21, 2022. R3-2 Special Richmond Purpose District.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously-granted waiver which permitted the enlargement of a two-family dwelling partially located within the bed of a mapped street, contrary to General City Law (“GCL”) § 35, and a waiver of bulk regulations necessary to address non-compliances resulting from the location of the development within and outside the improved streets, pursuant to Z.R. § 72-01(g), and expired on August 21, 2022.

A public hearing was held on this application on October 3, 2022, after due notice by publication in *The City Record*, and then to decision on October 17, 2022.

The Premises are located on the northwestern corner of Rossville Avenue and Poplar Avenue, within an R3-2 zoning district and in the Special South Richmond Development District (SRD), on Staten Island. With approximately 46 feet of frontage along Rossville Avenue, 89 feet of frontage along Poplar Avenue, 3,994 square feet of lot area, the Premises are occupied by a one-family, one-and-one-half story residential building partially located within mapped, but unbuilt, portions of both Rossville Avenue and Poplar Avenue.

The Board has exercised jurisdiction over the Premises since August 21, 2018, when, under the subject calendar number, the Board granted a waiver of GCL § 35 and, pursuant to Z.R. § 72-01(g), Z.R. § 107-461 to permit the enlargement of a two-family dwelling partially located within unbuilt, but mapped, portions of Rossville Avenue and Poplar Avenue on condition that 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 21, 2022; DOB review the plans approved therewith for compliance with all relevant provisions of the Zoning Resolution as if the unbuilt portions of Rossville Avenue and Poplar Avenue were not mapped; a revised certificate of occupancy be obtained within four years, by August 21, 2022; the approval be

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limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all 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 and the time to obtain a revised certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that, due to unforeseen delays, the owner had not started construction and, thereafter, the COVID-19 pandemic and related shutdowns caused further uncertainties and delays. The applicant submitted a construction timeline and estimates starting the work on the building by early 2023, completing the entire building by early 2025, and obtaining a certificate of occupancy in early 2026. Accordingly, the applicant seeks a four-year extension of time to complete construction and obtain a certificate of occupancy.

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 complete construction and obtain a certificate of occupancy for four years, by October 17, 2026, *on condition*:

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by October 17, 2026;

THAT DOB shall review the plans approved herewith for compliance with all relevant provisions of the Zoning Resolution as if the unbuilt portions of Rossville Avenue and Poplar Avenue were not mapped;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 102-15-A”), shall be obtained within four years, by October 17, 2026;

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

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

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, October 17, 2022.

2017-299-BZ

APPLICANT – Duane Morris LLP, for Douglaston Shopping Center, LLC, owner.

SUBJECT – Application June 8, 2022 – Extension of Time to complete construction and obtain a Certificate of Occupancy of a previously approved variance which permitted the increase in the degree of nonconformance of an existing nonconforming shopping center and a reduction in parking, which expired on May 8, 2022. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously-granted variance, under Z.R. § 72-21, which permitted the enlargement of a pre-existing non-conforming commercial building (Use Group (“UG”) 6) and an additional 718.1 square feet of accessory signage, contrary to Z.R. §§ 52-41 and 52-31, and expired on May 8, 2022.

A public hearing was held on this application on October 3, 2022, after due notice by publication in *The City Record*, and then to decision on October 17, 2022. Commissioner Sheta and Commissioner Yoon performed inspections of the Premises and surrounding area. Community Board 11, Queens, recommends approval of this application.

The Premises are located on the south side of the intersection of 61st Avenue and Douglaston Parkway, in an R4 zoning district, in Queens. With approximately 564,297 square feet of lot area, the Premises are occupied by a shopping center with four commercial buildings: (1) a one-story plus cellar and sub-cellar shopping center building developed principally to contain one large format department store but also previously occupied by a movie theater in the sub-cellar level (the “Main Building”); (2) a one-story building located at the sub-cellar level of the Premises occupied by a supermarket (the “Supermarket Building”); (3) a one-story building located on the sub-cellar level of the Premises occupied by local retailers; and (4) a one-story building located on the cellar level of the Premises occupied by an eating and drinking establishment.

The Board has exercised jurisdiction over the Premises since October 19, 1982, when, under BSA Cal. No. 323-82-BZ, the Board granted a variance to permit the installation of a business sign in excess of the maximum permissible surface area and height above curb level regulations on

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condition that the sign not be illuminated later than 10 p.m.

On January 4, 1983, under BSA Cal. No. 370-82-BZ, the Board granted a variance permitting the conversion of retail space in the Main Building to a seven-theater multiplex cinema (Use Group 8) for a term of 15 years, expiring January 4, 1998, on condition that a minimum of three security personnel be assigned at all times after 10:00 p.m. to direct incoming and exiting vehicular traffic along designated routes to minimize impacts on adjacent residential areas and to perform normal security functions in the general area; trailers be added to all film showings with appropriate graphics advising patrons of the proper exit routes for their vehicles; signs and screening be provided as indicated on plans; all movie showings cease no later than 12:00 midnight on weekdays and Sundays and 1:00 a.m. on Friday and Saturday evenings; the area surrounding the theaters be kept well-lit and free of debris and graffiti at all times; all lighting be directed away from adjacent residential areas; there be no showing of X-rated or pornographic films; all signs and screening be installed prior to the initial operation of the theaters; the door on the fence on 65th Avenue be kept closed and locked at sunset each evening to discourage theater patrons from parking on that street and entering the Premises via that door; application to and approval from the Board be secured prior to any change in ownership or lease of the property or lessee of the seven cinema theaters; an affidavit attesting to the continuing compliance with the terms and conditions of the variance be filed yearly with the Board and the Chairperson of Community Board 11, Queens, commencing one year from the grant of the application; and that all conditions appear on the certificate of occupancy.

On November 8, 1991, under BSA Cal. No. 335-91-BZY, the Board recognized a statutory vested right to complete construction at the site that had commenced prior to an amendment to the Zoning Resolution that rendered the development non-compliant and granted a two-year extension of time to complete construction, expiring June 30, 1993.

On June 2, 1998, under BSA Cal. No. 370-82-BZ, the Board amended the variance for the multiplex cinema and extended the term for an additional 20 years, expiring January 4, 2018, on condition that all other aspects of the prior resolution be complied with in all respects and a new certificate of occupancy be obtained within one year, by June 2, 1999.

On May 16, 2000, October 16, 2001, November 18, 2003, under BSA Cal. No. 370-82-BZ, the Board reopened the variance to permit extensions of time to obtain a certificate of occupancy, the latest of which expired November 16, 2005, and was granted on condition that the Premises be maintained free of debris and graffiti and that any graffiti located on the Premises be removed within 48 hours.

By letter dated September 10, 2008, the Board approved a change in ownership of the property and a change in lessee of the multiplex theater, previously approved under BSA Cal. No. 370-82-BZ.

On July 14, 2009, under BSA Cal. No. 259-08-BZ, the Board granted a variance permitting the enlargement of the pre-existing non-conforming Supermarket Building contrary to Z.R. § 52-41 on condition that that building have a maximum floor area of 57,701 square feet and that there be a minimum total of 1,265 parking spaces for the shopping center; all signage comply with C1 zoning district parameters; the use of the building be limited to a Use Group 6 supermarket; that all lighting be directed away from residences; and that the conditions be stated on the certificate of occupancy.

On March 15, 2011, under BSA Cal. No. 259-08-BZ, the Board amended the resolution to increase the permitted surface area of accessory signage for the supermarket due to size of the supermarket being more than 57,000 square feet and the unique topography of the site, which results in limited sight lines and street visibility necessitating signage in excess of that permitted pursuant to C1 zoning district regulations.

On May 8, 2018, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the enlargement of a pre-existing non-conforming commercial building (Use Group 6) and an additional 1718.1 square feet of accessory signage, contrary to Z.R. §§ 52-41 and 52-31, on condition that all work will substantially conform to drawings filed with the application marked "Received May 8, 2018"—Eighteen (18) sheets; the following be the bulk parameters of the Premises: a minimum of 387 parking spaces at the sub-cellar level, 511 parking spaces at the cellar level, a minimum of 266 parking space on the first floor level (a minimum of 1,164 total parking spaces); a maximum of 190,145 square feet of floor area on the sub-cellar level, 126,016 square feet of floor area on the cellar level and 11,680 square feet of floor area on the first floor level (a maximum of 327,841 square feet of total floor area); and a maximum total of 4,237.35 square feet of accessory signage, as indicated on the Board-approved plans; DOB confirm if placement of accessory signage located within the same zoning lot complies with applicable accessory signage regulations of the Zoning Resolution; the portion of the fence on the southern end of the site that backs onto adjacent residential rear yards be replaced; six months prior to completion and operation of the enlarged shopping center, the applicant shall inform the New York City Department of Transportation of this fact in writing, at which time DOT will determine the feasibility and implementation of the proposed improvements; the dry valve system that serves the dry standpipe system, the dry standpipe system and the dry sprinkler system that serves the parking deck be installed, tested and inspected and signed off by Fire Department by August 31, 2018, and failure to do so will result in the hearing of this item on the Board's Compliance calendar, pursuant to § 1-12.8 of the Board's Rules of Practice and Procedure, in September 2018; substantial construction be completed pursuant to Z.R. § 72-23; a revised certificate of occupancy be obtained within four years; the approval be limited to the relief granted by the Board in response to specifically cited and

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filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB ensure compliance with all 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 substantially complete construction and the time to obtain a revised certificate of occupancy having expired, the applicant now seeks an extension.

The applicant represents that, since the Board's approval, construction of interior non-structural work was completed. However, due to a change in management of the prospective tenant at the Premises, the tenant was no longer interested in inhabiting the space. The applicant states that negotiations and litigation arising from the loss of their anchor tenant substantially delayed the construction timeline. The applicant continued to market the Premises to other potential anchor tenants and represents that the COVID-19 pandemic has further impacted their efforts to secure a tenant. Accordingly, the applicant seeks additional time to market the Premises and secure an anchor tenant and, accordingly, requests a four-year extension of time to complete construction and obtain a certificate of occupancy.

The Fire Department states, by correspondence dated October 3, 2022, that the fire suppression system is operational and the Fire Department has no objection to this application.

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 8, 2018, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, by October 17, 2026, *on condition*:

THAT construction shall be completed by October 17, 2026;

THAT the following shall be the bulk parameters of the Premises: a minimum of 387 parking spaces at the sub-cellar level, 511 parking spaces at the cellar level, a minimum of 266 parking space on the first floor level (a minimum of 1,164 total parking spaces); a maximum of 190,145 square feet of floor area on the sub-cellar level, 126,016 square feet of floor area on the cellar level and 11,680 square feet of floor area on the first floor level (a maximum of 327,841 square feet of total floor area); and a maximum total of 4,237.35 square feet of accessory signage, as indicated on the Board-approved plans marked "Received May 8, 2018"—Eighteen (18) sheets;

THAT DOB shall confirm if placement of accessory signage located within the same zoning lot complies with applicable accessory signage regulations of the Zoning Resolution;

THAT the portion of the fence on the southern end of the site that backs onto adjacent residential rear yards shall be replaced;

THAT six months prior to completion and operation of the enlarged shopping center, the applicant shall inform the New York City Department of Transportation of this fact in writing, at which time DOT will determine the feasibility and implementation of the proposed improvements;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-299-BZ"), shall be obtained within four years, by October 17, 2026;

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 17, 2022.

245-32-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Raso, owner.

SUBJECT – Application December 23, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive repair facility (UG 16B) which expired on July 9, 2022; Amendment to permit an increase of parking and change in hours of operation. R6B/C2-3 zoning district.

PREMISES AFFECTED – 123-05 101st Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

615-57-BZ

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

SUBJECT – Application March 11, 2022 – 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 8, 2023. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for postponed hearing.

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346-60-BZ

APPLICANT – Glen V. Cutrona, AIA, for Tuma Basaranlar, owner.

SUBJECT – Application April 28, 2021 – 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 permit the conversion of automotive repair bays to an accessory convenience store and incidental alterations to the site. C2-3/R6 zoning district.

PREMISES AFFECTED – 211 Tapscott Street, Block 3565, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for deferred decision.

201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking which expired on August 15, 2021; Waiver of the Board’s Rules of Practice and Procedures. R3-2/C2-3 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, Block 11712, Lot 28, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for deferred decision.

112-11-BZII

APPLICANT – Belkin Burden Goldman, LLP, for Tom Petrosino, owner.

SUBJECT – Application February 17, 2022 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of a scrap metal yard (UG 18) which expires on June 5, 2022. C8-1 zoning district.

PREMISES AFFECTED – 2994 Cropsy Avenue, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application February 24, 2021 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a mixed residential and community facility (Congregation Divrei Yoel). The amendment seeks to permit changing the dimensions of the zoning lot, and by making minor changes to the interior layout of the cellar and lower three floors. R7A zoning district.

PREMISES AFFECTED – 77-79 Gerry Street, Block 2266, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for postponed hearing.

APPEALS CALENDAR

170-93-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for JABE Contracting LLC, owner.

SUBJECT – Application August 25, 2020 – Proposed enlargement of a commercial building not fronting on a legally mapped street, contrary to General City Law §36. M3-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 220 Industrial Loop, Block 7206, Lot 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta...4
Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

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The decision of the Department of Buildings, dated July 27, 2020, acting on Alteration Type 1 Application No. 520453474 reads, 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 2, 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 (“GCL”) § 36 to permit, in an M3-1 zoning district and the Special South Richmond District, the enlargement of an existing commercial building not fronting on a legally mapped street.

A public hearing was held on this application on November 30, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 23, 2022, and then to decision on October 17, 2022. Community Board 3, Staten Island, recommends approval of the application.

The Premises are located on the northwest intersection of Industrial Loop and Arthur Kill Road, within an M3-1 zoning district and the Special South Richmond District, in Staten Island. With approximately 115 feet of frontage along Industrial Loop, 172 feet of depth, and 18,273 square feet of lot area, the Premises are occupied by a one-story commercial building.

The Board has exercised jurisdiction over the Premises since May 17, 1994, when, under the subject calendar number, the Board granted a waiver of General City Law § 36, limited to the objection noted, to permit the construction of a building, on condition that the sidewalk, curb, curb cut, and pavement to the middle of the street comply with the requirements of the Department of Transportation (“DOT”); the building substantially conform to drawings filed with the application; and all applicable laws, rules, and regulations be complied with.

The applicant proposes to enlarge the existing building with no changes to the lot size, curb cuts, or conforming use by adding a one-story warehouse at the southwest corner of the subject lot. The applicant represents the proposed enlargement would increase the floor area of the subject building from 4,266.30 square feet (0.23 FAR) to 9,245.12 square feet (0.50 FAR) and would comply and conform to all the underlying requirements of the M3-1 zoning district and the Special South Richmond District. The applicant states that it seeks to use the proposed enlargement as additional indoor storage for contractor materials.

The applicant requests an amendment to the existing GCL § 36 waiver as the proposed enlargement fronts only on Industrial Loop, an existing and improved, two-way road not duly placed on the official New York City map. The applicant states that as the subject lot is only accessible from Industrial Loop, the requirement that the Premises be

accessible from a street duly placed on the official City map results in practical difficulty and unnecessary hardship in development of the subject lot and, as per the Board’s prior grant, the Premises were developed to not be related to any existing mapped streets or highways since Industrial Loop is paved and improved and provides access to several existing buildings in the vicinity of the subject site.

By letter dated November 24, 2021, the Fire Department states a review of its records indicates that an application has not been filed with the Bureau of Operations, City Planning Unit for review. In addition, FDNY requires inspection, testing, and maintenance records of the private fire hydrants that serve this development as required in the 2014 Fire Code, Section 508.5.2. The Bureau of Fire Prevention respectfully requests that the Board of Standards and Appeals direct the applicant to file with the Fire Department for plan review and to provide records as described above for the private fire hydrant system. By correspondence dated May 23, 2022, the Fire Department, Bureau of Operation and Fire Prevention states that it is in receipt of the Yard Hydrant Test for the subject property. Therefore, the Fire Department has “no objection” to the proposed enlargement at the Premises.

By letter dated October 4, 2022, the New York City Department of Environmental Protection (“DEP”) states there is a 36" storm sewer and an 8" diameter (“dia.”) private water main on Industrial Loop. Existing 42" storm sewer is crossing the privately owned reference lot. Applicant submitted site plans which show the 15 feet proposed easement from the outside of the 42" dia. storm sewer, which will be available to DEP for the maintenance and/or reconstruction of the existing 42" dia. storm sewer. It is anticipated that the sanitary connection, drywells, private water main and water connections will be maintained by the owner and will not be maintained by the City of New York. Based on the above, the NYC DEP has no objection to the proposed GCL 36 application.

At hearings, the Board raised concerns regarding available parking at the subject site, the condition of the private road, and the bulk specifications of the existing building and proposed enlargement. In response to the concerns about parking the applicant submitted a statement declaring that zero accessory parking spaces are required and that two voluntary existing accessory parking spaces are proposed. The applicant notes that the proposed development would consist of two uses in Use Group (“UG”) 10 and 16 - an existing UG 10 wholesale facility with accessory office and a UG 16 warehouse, which would replace the current UG 16 open storage of fencing materials. Additionally, the applicant submitted a submitted a site plan and corresponding zoning analysis, which noted that pursuant to Z.R. § 44-21, the UG 10 wholesale facility requires one accessory parking space per 300 square feet of zoning floor area. The applicant’s plans illustrate that a total of 1,534.8 square feet of UG 10 zoning floor area is proposed, resulting in five required accessory parking spaces ($1,534.8/300 = 5.1$ or 5), however, pursuant to Z.R. § 44-23, required parking spaces that are less than 15 are

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waived. Therefore, the applicant concludes that zero accessory parking spaces are required for the proposed UG 10 use. For the proposed UG 16 warehouse, Z.R. § 44-21 requires one accessory parking space for each 2,000 square feet of zoning floor area, but only if the proposed use exceeds the threshold of 10,000 square feet of zoning floor area or has at least 15 employees, and the applicant states that zero accessory parking spaces are required for the proposed warehouse use as the proposed use does not meet this threshold.

In response to the Board concerns about the condition of the private road, the applicant submitted street level and satellite photographs, showing that Industrial Loop is paved and improved with a sidewalk adjacent to the Premises. In response to the Board's questions about the bulk specifications of the existing and proposed building, the applicant clarified that the prior grant set forth no specifications or limits as to the bulk of a building to be constructed on the subject lot, and the proposed enlargement of the existing building remains within the bulk threshold of the underlying zoning district with a proposed FAR of 0.50 FAR proposed, where a maximum 2.0 FAR is permitted, as per Z.R. § 43-12.

Based upon its review of the record, the Board has determined that the amendment to the conditions of the original grant, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby waive its Rules of Practice and Procedure and amend the resolutions dated May 17, 1994, so that as amended, this portion of the resolution shall read: "the Board authorizes a waiver of GCL § 36 for the proposed enlargement, *on condition* that all work and site conditions shall conform to drawings filed with this application marked 'Board Approved: October 17, 2022' — One (1) sheet; and *on further condition*;

THAT the sidewalk, curb, curb cut and pavement to the middle of the street comply with the requirements of the Department of Transportation ('DOT'); 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, October 17, 2022.

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.

SUBJECT – Application September 4, 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). R3X Special Richmond District.

PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

I.

The decision of the Department of Buildings, dated August 11, 2020, acting on New Building Application No. 540177173 reads in pertinent part:

Proposed new building within the bed of a mapped street is contrary to Article III, Section 35 of the General City Law, there are no bulk regulations for building within the bed of a mapped street as per ZR 72-01(g). Therefore, obtain Board of Standards and Appeals approval is required.

This is an application under General City Law ("GCL") § 35 to permit, in an R3X zoning district and the Special Richmond District, the development of a property within the mapped but unbuilt portion of a street and a waiver of the applicable height and setback regulations pursuant to Z.R. § 72-01(g).

A public hearing was held on this application on October 19, 2021, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2022, and then to decision on October 17, 2022. Commissioner Scibetta performed an inspection of the Premises and surrounding neighborhood. Community Board 3, Staten Island, recommends denial of this application stating:

The Community Board informed the applicant of a pending project (HWR-890) which is funded and is currently in the design phase. This project encompasses Woodrow Road from Rossville Avenue to Alexander Avenue. The project is for street reconstruction and improvements for traffic mitigation. For this reason, we do not recommend approval of this application.

The Premises are located at the northeast corner of the intersection of Ballard Avenue and Woodrow Road, within an R3X zoning district and the Special Richmond District, in Staten Island. With approximately 42 feet of frontage along Ballard Avenue, 105 feet of frontage along Woodrow Road, and 5,829 square feet of lot area, the Premises are

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currently vacant.

II.

GCL §35, in relevant part, provides that the Board may approve permits for development within the bed of mapped streets, as follows:

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the City has not acquired title thereto, the City may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the City.

Furthermore, Z.R. § 72-01(g) provides that the Board shall be able to do the following:

[W]aive bulk regulations affected by unimproved streets where a development, enlargement, alteration consists in part of construction within such streets and where such development, enlargement or alteration would be non-complying absent such waiver, provided the permit pursuant to Section 35 of the General City Law and has prescribed conditions which require the portion of the development or enlargement to be located within the unimproved street compliant and conforming to the provisions of this Resolution. Such bulk waivers shall only be as necessary to address noncompliance resulting from the location of the development or enlargement within and outside the unimproved streets, and the zoning lot shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved streets were not mapped.

III.

The applicant proposes to construct a new two-family, two-story, detached residence with 3,404 square feet of floor area (0.50 FAR). The applicant represents that the proposed residence would comply and conform to all requirements of the underlying zoning district, including the special district requirements, and would provide three required accessory parking spaces.

As per the requirements under GCL § 35, the applicant represents that the City of New York has never taken any action toward acquisition of the privately owned portion of Woodrow Road at the Premises, and there appears to be no reasonable possibility that any agency of the City of New York would have interest in development of the unimproved portion of Woodrow Road. The applicant further states that any widening of the street would require condemnation of portions of several lots on the northern side of Woodrow Road, a number of which are currently developed with patios, pools, driveways, and portions of buildings, further lessening any potential interest.

As per Z.R. § 72-01(g), the applicant requests a waiver

of all required bulk waivers, including, but not limited to, front yards and floor area but represents that the proposed residence has been designed to comply with the provisions of the Zoning Resolution as if the unbuilt portion of Woodrow Road were not mapped.

IV.

By letter correspondence dated July 18, 2022, the Fire Department states that the Fire Department has no objection to the application.

By letter dated October 19, 2021, the NYC Department of Transportation (“DOT”) stated that in response to revised application documents received by DOT on September 29, 2020, and according to the Staten Island Borough President’s Topographical Bureau, Woodrow Road, between Ballard Avenue and Delmar Avenue is mapped to a 100-foot width and has a record width of 60 feet. This street segment also has a Corporate Counsel of Opinion (“CCO”) for 30 feet to 50 feet, as-in-use, dated January 10, 1975. There is no CCO for 10 feet to 30 feet between the record lines. The City does not have title.

DOT has completed its review of this application and has the following comments:

1. Any street trees and other street amenities must be at least seven feet from the curb cut. The site plan shows the proposed ten-foot-wide curb cut adjacent to an existing tree. Therefore, the applicant must either remove the proposed curb cut from this location or provide approval from the NYC Department of Parks and Recreation (“DPR”) to relocate or remove the existing tree to accommodate the proposed curb cut.
2. The applicant is required to upgrade the pedestrian ramps adjacent to the property to comply with The American Disabilities Act (“ADA”) and in compliance with DOT’s requirements. The applicant should update the site plan to reflect these modifications but must also submit a Builder’s Pavement Plan (“BPP”) to DOT. Please submit the BPP to DOT’s Pedestrian Ramp Program Unit. Additional comments will be provided at that time.

Please note that there is no current capital project at this location. Capital Project HWR890 has been cancelled, and DOT will soon notify this to the Community Board. There is a Department of Environmental Protection (“DEP”) project SE818 for sanitation and storm sewers in Sheldon Avenue, between Ellsworth Avenue and Delmar Avenue. Please contact the NYC Department of Protection (“DEP”) for a determination as to whether this project has any impact on the proposed development at this site.

By correspondence dated October 5, 2022, DEP states that based on DEP maps, there are existing 10” diameter (“dia.”) sanitary sewer, 48” dia. storm sewer, and a 12” dia. City water main in the bed of Woodrow Road, between Ballard Avenue and Delmar Avenue. The latest Drainage Plan D-1 (R-1) & D-2 (R-38), Sweet Brook Watershed,

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sheet 3 of 8, dated September 14, 2010, shows two 10" dia. sanitary sewers and 48" dia. storm sewer in the bed of Woodrow Road, between Ballard and Delmar Avenues. The applicant has submitted a Site Plan BSA-1, dated September 29, 2022. The Site Plan shows 100'-0" width of the mapped Woodrow Road, between Ballard and Delmar Avenues, from which approximately 61' will be available for the installation, maintenance, and/or reconstruction of the future and existing sewers and water main. Based on the above, the NYC DEP has no objections to the proposed GCL-35 application.

At hearings, the Board raised concerns regarding the proposed construction of a subdivision containing the subject site, the BPP, the submitted proposed plans which the Board stated needed to be dimensioned to show the rest of the proposed remaining street bed, and the nature of the requested Z.R. § 72-01(g) bulk waivers. In response, the applicant submitted revised proposed site plan demonstrating the approved residence connection and proposed dimensions; a BPP, which it noted would only be approved subsequent to a grant of the subject application pursuant to GCL § 35; and stated that the subdivision application is filed and pending with DCP but that DCP was not prepared to advance the application with zoning lot that would require a waiver of GCL § 35 from the Board. The applicant further stated that upon grant of the subject application, the property owner would pursue completion of the subdivision application.

Accordingly, 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 August 11, 2020, acting on New Building Application No. 540177173, under the powers vested in the Board by Section 35 of the General City Law and Z.R. § 72-01(g), to *permit* the construction of a building located within the mapped but unbuilt portion of a street and waive all applicable underlying bulk waivers *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved: October 17, 2022"- One (1) sheet; and *on further condition*:

THAT the applicant must obtain approval for the proposed subdivision from the New York City Department of City Planning ("DCP");

THAT any street tree or ramp must be more than seven feet from the curb cut, as stated in the DOT approval letter;

THAT the pedestrian ramp adjacent to the subject site must comply with the ADA and DOT requirements pursuant to an approved BPP;

THAT DOB shall review the BSA-approved plans for compliance with all of the applicable provisions of the Zoning Resolution as if the unbuilt portion of the subject street was not mapped;

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. 2020-67-A"), shall be obtained within four years, by October 17, 2026;

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 17, 2022.

2022-17-A

APPLICANT – Carter Ledyard & Milburn LLP, for 25C LLC, owner.

SUBJECT – Application March 10, 2022 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaptation of a zoning text amendment. M1-2 zoning district. PREMISES AFFECTED – 27 Stewart Avenue, Block 2994, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application to establish a common-law vested right to continue construction of a Use Group ("UG") 5 transient hotel in an M1-2 zoning district and to renew building permits lawfully issued by the Department of Buildings ("DOB"), acting on New Building Application No. 32065070-01-NB, prior to the effective date of an amendment to the provisions of Z.R. § 42-10 which prohibited UG 5 hotels in M1 zoning districts.

A public hearing was held on this application on September 12, 2022, after due notice by publication in *The City Record*, and then to decision on October 17, 2022. Community Board 1, Brooklyn, recommended approval of this application. The Board also received a letter from a Council Member objecting to this application and raising concerns regarding impacts to neighborhood character, parking, loading, noise, and air pollution.

The Premises are located on the northwestern corner of Stewart Avenue and Flushing Avenue, within an M1-2 zoning district, in Brooklyn. With approximately 210 feet of

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frontage along Stuart Avenue, 120 feet of frontage along Flushing Avenue, and 22,740 square feet of lot area, the Premises are occupied by an unfinished nine-story hotel.

On June 26, 2017, DOB issued Permit No. 32065070-01-NB for the erection of a nine-story, UG 5 transient hotel at the Premises (the “Permit”). The Permit has since been renewed three times, with the final renewal date on November 15, 2021, and the expiration date on December 30, 2021.

I.

NYC City Council adopted the final M1 Hotel Text Amendment (“Amendment”) on December 20, 2018, which amended the Zoning Resolution to prohibit, pursuant to Z.R. § 42-111, UG 5 hotels in M1 districts, except as permitted by a special permit issued by the City Planning Commission pursuant to Z.R. § 74-803 or as otherwise authorized by the Zoning Resolution.

Pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. The text of Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted before the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each if the Board finds 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.” However, due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021).

II.

Because the deadlines for completion under Z.R. § 11-332(a) and subsequent Mayoral Emergency Executive Orders have lapsed, and the Permit has expired, the applicant now seeks an extension of time for construction under the doctrine of common-law vested rights.

Where an amendment to a zoning ordinance is adopted, the owner’s rights under the prior zoning ordinance are preserved only if such rights have vested. *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10 (2d Dep’t 1976). A land-use benefit is deemed vested under the following circumstances:

[W]hen, 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).

Likewise, in applying New York’s common-law vesting standard, the Board has held that a common law vested right to continue construction generally exists where the owner has (i) undertaken substantial construction and (ii) made substantial expenditures prior to the effective date of a zoning change, and (iii) where serious loss will result if the owner is denied the right to proceed under the prior zoning.

A.

Vested rights cannot be acquired where there the applicant relied on an invalid permit. *Perlbinder Holdings, LLC v. Srinivasan*, 27 N.Y.3d 1, 8, 9 (N.Y. 2016) (affirming denial of common-law vested rights application where DOB audit revealed permit applicant relied upon was invalidly issued). Here, the record does not indicate that the Permit was invalid. Accordingly, the record reflects and the Board finds that the applicant commenced development pursuant to a legally issued permit.

B.

The Board determines whether “substantial construction” has been met based on a review of “whether or not certain physical stages of construction relating to excavation and the foundation have been completed.” *Estate of Kadin*, 163 A.D.2d at 309; *see also Matter of Lefrak Forest Hills Corp. v. Galvin*, 40 A.D.2d 211, 216, 218 (2d Dep’t 1972) (holding substantial construction finding met where applicant installed approximately 2,475 cubic yards of concrete for foundations and walls prior to permit lapse).

Here, the applicant has presented evidence that, in accordance with the building permits authorizing work associated with the Permit, the owner has effected substantial construction to further development of the building. In particular, the applicant states that as of December 20, 2021, it has already completed 84% of the planned excavation and 78% of the foundation. In support of this contention, the applicant submitted an affidavit from the property owner, digital renderings, and photographs

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demonstrating the extent of the work completed at the site. Accordingly, the record reflects and the Board finds that, in accordance with the building permits authorizing work associated with the Permit, the owner has effected substantial construction to further development of the building.

C.

In determining whether the substantial expenditures finding has been met, the Board considers costs expended in connection with actual construction conducted on the Premises in furtherance of the applicant's intended use. *See Golden City Park Corp. v. Board of Standards and Appeals of City of New York*, 263 A.D.52 (2d Dep't 1941); *see also Town of Hempstead v. Lynne*, 222 N.Y.S.2d 526, 530-531 (Sup. Ct., Nassau County, 1961) (not considering an expenditure where "[t]here was no special connection between the expenditure and the proposed use").

Here, the applicant submitted evidence that substantial expenses have been paid or incurred as irrevocable financial commitments, totaling approximately \$5,979,166.00 since starting the project. The applicant represents that this amount was expended on preparing the Premises for construction, excavating, pouring the foundation, and erecting the superstructure of the building. In support, the applicant submitted financial information, including copies of invoices and a check register, documenting the costs incurred in furtherance of the applicant's intended development. Accordingly, the record reflects, and the Board finds that the owner has incurred substantial expenses to further development of the building.

D.

Finally, the applicant's "actions relying on a valid permit must be so substantial that the municipal action withdrawing the permit results in serious loss, rendering the improvements essentially valueless." *Town of Orangetown*, 88 N.Y.2d at 47-48.

Here, the applicant submitted evidence that enforcement of the Amendment would cause the applicant serious loss. In particular, the applicant stated that cancelling the hotel project and developing an as-of-right commercial or manufacturing building at the Premises would require abandoning all consultation work, the HVAC contract, and the elevator contract; commissioning new plans; altering or filling the below-grade space; altering the foundation; and demolishing the superstructure. The applicant estimated that these losses would total approximately \$8,021,551.00. Accordingly, the record reflects and the Board finds that the owner would suffer serious loss if denied the right to continue construction.

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 common law, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with Permit No. 32065070-01-NB.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby grant this application, under

common law, 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. 32065070-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for four years, expiring October 17, 2026.

Adopted by the Board of Standards and Appeals, October 17, 2022.

2020-58-A and 2020-59-A

APPLICANT – Eric Palatnik, P.C., for Kenneth Chapman, owner.

SUBJECT – Application July 17, 2020 – Proposed construction of a single-family home on a property not fronting on a mapped street contrary to General City Law ("GCL") 36. R1-2 zoning district.

PREMISES AFFECTED – 10, 12 Jasmine Way, Block 695, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2021-2-A thru 2021-7-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 99-21 Hollis Avenue LLC, lessee.

SUBJECT – Application January 13, 2021 – Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 99-21 Hollis Avenue aka 191-01/191-09/191-13/192-01/192-05/192-13 Hollis Avenue, Block 10839, Lot (s) 1, 50, 49, 48, 47, 46, Borough of Queens.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for deferred decision.

2022-4-BZY

APPLICANT – Sheldon Lobel, P.C., for President Sai, LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-4/R6B zoning district.

PREMISES AFFECTED – 529 President Street, Block 441, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

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9-10, 2023, at 10 A.M., for continued hearing.

2022-7-BZY

APPLICANT – Eric Palatnik, P.C., for St. Johns Real Estate Consultant, Inc., owner.

SUBJECT – Application January 19, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-75 11th Street, Block 473, Lot 553, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

ZONING CALENDAR

2020-44-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla City Holdings Corp., owner.

SUBJECT – Application May 22, 2020 – 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.

PREMISES AFFECTED – 2228 Gerritsen Avenue, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021 – Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district.

PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to January

2021-40-BZ

APPLICANT – Terminus Group, LLC, for 157 West 24th Street Lodging LLC, owner.

SUBJECT – Application June 18, 2021 – Variance (§72-21) to permit the development of a fifteen (15) story mixed-use building contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 157 W 24th Street, Block 800, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2021-61-BZ

APPLICANT – Eric Palatnik, P.C., for Eduard Magidov, owner.

SUBJECT – Application September 16, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R3-1 zoning district.

PREMISES AFFECTED – 2021-61-BZ, 4080 Ocean Avenue, Block 8731, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

2022-8-BZ

APPLICANT – Cuddy & Feder LLP, for AP Wireless II, LLC, owner; Crown Castle USA Inc., lessee.

SUBJECT – Application January 19, 2022 – Variance (§72-21) to permit an existing cellular monopole in excess of permitted height requirement contrary to ZR §33-43. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 183-01 Harding Expressway, Block 7067, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

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PUBLIC HEARINGS
MONDAY-TUESDAY, OCTOBER 17-18, 2022
2:00 P.M.

Carlo Costanza, Executive Director

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

ZONING CALENDAR

2021-14-BZ

APPLICANT – Rampulla Associates Architects, for Venetian Circle LLC, owner; Starbucks Corporation, lessee. SUBJECT – Application February 10, 2021 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 2010 Victory Boulevard, Block 723, Lot 4, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2021-38-BZ

APPLICANT – Eric Palatnik, P.C., for 709 Shepherd Avenue Corp., owner.

SUBJECT – Application June 7, 2021 – Variance (§72-21) to permit the development of a residential building contrary to ZR §23-48 (side yards for existing narrow lots) and ZR §25-23 (required parking). R5 zoning district.

PREMISES AFFECTED – 707 Shepherd Avenue, Block 4453, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2021-87-BZ

APPLICANT – Eric Palatnik, P.C., for ZL Macedonia, LLC, owner.

SUBJECT – Application December 27, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-20. C4-3 zoning district.

PREMISES AFFECTED – 37-16 Union Street, Block 4978, Lot 46, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, for decision, hearing closed.

MINUTES

CORRECTION: This resolution, adopted on October 18, 2021, under Calendar No. 2017-261-BZ, is hereby corrected to read as follows:

2017-261-BZ

CEQR #15-BSA-029K

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owner.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district. PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 21, 2020, acting on Alteration Type 1 Application No. 340740719, reads in pertinent part:

1. The proposed lot coverage exceeds the maximum lot 65% permitted pursuant to ZR 24-11 for the interior portion of the lot.
2. The proposed community facility building does not provide the required 30-foot rear yard for the interior portion of the lot pursuant to ZR 24-36.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R6 zoning district, the enlargement of an existing two-story plus cellar, community facility that does not comply with the zoning requirements for lot coverage (Z.R. § 24-11) and rear yards (Z.R. § 24-36).

A public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, with continued hearings on November 19, 2019, January 14, 2020, November 30, 2020, March 22, 2021, and October 5, 2021, and then to decision on October 18, 2021. Community Board 9, Brooklyn, recommends approval of this application. The Board received one form letter of support and two letters of support from a City Council Member and the Brooklyn Borough President. The Board also received two letters of objection to this application, citing concerns over increased traffic and noise, reduction of light and air to the surrounding properties, and fire egress hazards.

I.

The Premises are located at the intersection of East New York Avenue and Brooklyn Avenue on the northeast corner, within an R6 zoning district, in Brooklyn. With approximately 44 feet of frontage along East New York Avenue, 50 feet of depth, and 2,209 square feet of lot area,

the Premises are currently occupied by an existing two-story with cellar, community facility.

II.

The applicant proposes to construct a new five-story plus cellar community facility (Use Group “UG” 4A) with 4.74 FAR (922 sq. ft. at the cellar level used as a fitness space and for a religious bath; 1,078 sq. ft. at the first floor comprising of a house of worship and a warming kitchen; 1,453 sq. feet at the second floor used as a multi-purpose room; 1,970 sq. ft at the third floor comprised of a study room, a library, music ministry and studio space, and a computer room; 888 sq. ft. at the fourth floor comprised of three classrooms and two mentoring rooms; and 888 sq. ft. at the fifth floor comprised of three offices, a conference room, and a classroom), a wall height and total height of 50 feet, a lot coverage of 2,016 sq. ft., and a rear yard measuring 0'-0".

In the subject R6 zoning district, the Zoning Resolution requires a maximum lot coverage of 65% above the portion of the building measuring 23 feet in height or 1,436 sq. ft. for the subject building, *see* Z.R. §§ 24-11 and 24-33, and a rear yard with a minimum depth of 30 feet, *see* Z.R. § 24-36. Accordingly, the applicant seeks the relief requested 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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its small lot size and shallow lot depth—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 particularly, the applicant notes that the subject site currently has a lot depth of 50'-0", and the portion of the lot beyond 100 feet of the corner may only be developed to a depth of 20'-0", characteristics which limit the applicant’s ability to develop the Premises to meet its programmatic needs and are not commonly found in the surrounding area.

In support of this contention, the applicant surveyed lots within 400 feet of the Premises (the “Study Area”) finding 13 properties comparably shallow to the subject Premises, measuring 50'-0" or less in depth. The applicant states that 12 out of the 13 lots are distinguishable from the subject site because they contain semi-attached residences on shallow lots, which were all constructed as a single development; predate the current provisions of the Zoning Resolution; and are not occupied by a community facility use, which typically require larger footprints.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 24-11 and 24-36 would result in a building which could only be 36'-3" deep, and combined with stairs, elevators, and other required circulation space above the first floor, the resulting small classrooms, study rooms, and multipurpose rooms

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would be impractical for its proposed use and projected number of students. The applicant represents that compliance with underlying zoning regulations would not permit the usable development of the Premises unless a variance were 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a not-for-profit religious institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further 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 the surrounding area contains a diverse mix of buildings and building use, noting that the three adjacent properties include a five-story mixed-use commercial and residential building, a one-story commercial building, and a two-story, two-family residence with an accessory garage in the rear. Additionally, the proposed building height of 50 feet is less than the maximum permitted height of 60 feet and will have an open area 10 feet in width, used as a driveway and for parking by the residence.

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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, which have limited the applicant's ability to meet its programmatic needs. Over the course of hearings, the Board raised concerns that the hardship complained of in the instant application may be self-created due to the previous common ownership between lots 1, 73, and 74. In response, the applicant submitted the full ownership history of the three lots, which demonstrated that although all three lots were in common ownership at various times, all three lots were developed on their own and reiterated that it is the applicant's programmatic needs which has necessitated the hardship complained of in the current application before the Board.

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 notes that the variance request is 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.

IV.

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. 18BSA029K, dated October 18, 2021. 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.

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.

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* the construction of a five-story plus cellar, community facility that does not comply with the zoning requirements for lot coverage (Z.R. § 24-11) and rear yards (Z.R. § 24-36); *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 13, 2020"—Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a lot coverage of 2,016 sq. ft. and a rear yard measuring 0'-0";

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-261-BZ"), shall be obtained within four years, by October 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;

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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, October 18, 2021.

***The resolution has been amended. Corrected in Bulletin Nos. 43-44, Vol. 107, dated October 28, 2022.**

BULLETIN

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2022-83-BZ

20 Joline Lane, Block 7826, Lot(s) 0135, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit the enlargement of an existing of a cellar and one-story, one-family building that does not provide a required rear yard equivalent pursuant to ZR § 23-532. R1-2 Special South Richmond District. R1-2 (SRD) district.

2022-84-BZ

133-09 37th Avenue, Block 4970, Lot(s) 1 and 53, 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. C4-2 zoning district. C2-4 district.

2022-85-BZ

257 Coleridge Street, Block 8741, Lot(s) 0060, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R3-1 zoning district. R3-1 district.

2022-86-BZ

1762 East 9th Street, Block 6665, Lot(s) 0052, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. C4-2 zoning district. C4-2 (OP) district.

2022-87-A

170 North 10th Street, Block 2305, Lot(s) 10/11, Borough of **Brooklyn, Community Board: 1**. Appeal seeking the revocation of work permits the New York City Department of Buildings (the "DOB") improperly issued to an unlawful proposed development. C1-4/R6A zoning district. R6A, C1-4 district.

2022-88-BZ

318 Seguire Avenue, Block 6699, Lot(s) 0007, Borough of **Staten Island, Community Board: 3**. Proposed enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet of floor area, contrary to ZR 22-14. R3x in SRD zoning district. R3X in SRD district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, JANUARY 9-10, 2023
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, January 9th, 2023, at 10:00 A.M. and 2:00 P.M., and Tuesday January 10th, 2023, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

615-57-BZ

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

SUBJECT – Application March 11, 2022– Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on June 5, 2023. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

779-57-BZ

APPLICANT – Nasir J. Khanzada, for Louis D. Katz, owner; Apinderjit Toor, lessee.

SUBJECT – Application July 12, 2020– Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on March 11, 2013; Amendment to permit the legalization of the conversion of automotive repair bays to auto alarm and audio system installation. Waiver of the Board's Rules of Practice and Procedures. C2-4/R6A zoning district.

PREMISES AFFECTED – 181-24 Hillside Avenue, 2nd Floor, Block 9618, Lot 30, Borough of Queens.

COMMUNITY BOARD #4Q

175-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 20 Luquer Street LLC, owner.

SUBJECT – Application September 15, 2022 – Extension of Time to Complete Construction of a previously approved Variance (72-21) permitting the construction of a four-story multiple dwelling with accessory parking which expired on June 19, 2022; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, Block 520, Lot(s) 13 & 16, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., Congregation Divrei Yoel, owners.

SUBJECT – Application February 24, 2021 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a mixed residential and community facility (Congregation Divrei Yoel). The amendment seeks to permit changing the dimensions of the zoning lot, and by making minor changes to the interior layout of the cellar and lower three floors. R7A zoning district.

PREMISES AFFECTED – 77-79 Gerry Street, Block 2266, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEALS CALENDAR

2022-28-A, 2022-29-A & 2022-30-A

APPLICANT – Ronald D. Victorio, R.A., for Bedell Estates, LTD., Rivela, Pres., owner.

SUBJECT – Application May 19, 2022– Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development prior to the adaption of a zoning text amendment. R3X Special South Richmond Purpose District.

PREMISES AFFECTED – 15, 17 & 19 Bedell Street, Block 7702, Lot(s) 134, 135 & 136, Borough of Staten Island.

COMMUNITY BOARD #5SI

2022-68-A

APPLICANT – 4TS II LLC, for Jamestown OTS, L.P., owner.

SUBJECT – Application September 2, 2022– Interpretive Appeal concerning a final determination of the New York City Department of Buildings. C6-7 zoning district/Special Midtown District.

PREMISES AFFECTED – 1475 Broadway f/k/a One Times Square, Block 995, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ZONING CALENDAR

2021-26-BZ

APPLICANT – Eric Palatnik, P.C., for Ficesco 13 Luquer LLC, owner.

SUBJECT – Application April 23, 2021– Variance (§72-21) to permit the development of a four (4) story residential-use building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 12 Coles Street, Block 513, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #6BK

CALENDAR

2021-27-BZ

APPLICANT – Eric Palatnik, P.C., for Ficesco 13 Luquer LLC, owner.

SUBJECT – Application April 23, 2021 – Variance (§72-21) to permit the development of a four (4) story residential-use building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 13 Luquer Street, Block 513, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2021-28-BZ

APPLICANT – Eric Palatnik, P.C., for Ficesco 13 Luquer LLC, owner.

SUBJECT – Application April 23, 2021 – Variance (§72-21) to permit the development of a four (4) story residential-use building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 375 Columbia Street, Block 513, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2021-71-BZ

APPLICANT – Eric Palatnik, P.C., for Al Farqan Jame Masjid, owner.

SUBJECT – Application November 12, 2021 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (Al Furqan Mosque) contrary to underlying bulk requirements. R4A zoning district.

PREMISES AFFECTED – 105-31 76th Street, Block 9124, Lot 106(tent), Borough of Queens.

COMMUNITY BOARD #10Q

2022-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Rahmoun Mizrahi and Ety Mizrahi, owners.

SUBJECT – Application February 17, 2022 – Special Permit (§73-622) to permit the enlargement of a detached two-story single-family home contrary to underlying bulk requirements. R3-2 zoning district.

PREMISES AFFECTED – 1961 East 21st Street, Block 6827, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Shampa Chanda, Acting Chair/Commissioner

TELECONFERENCE PUBLIC HEARINGS**WEDNESDAY, JANUARY 11, 2023****10:00 A.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearing, Wednesday, January 11, 2023, at 10:00 A.M., to be streamed live through the Board’s website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL HEARING**2017-147-A & 2018-183-A**

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Motion to review decision with respect to ZR §§ 33-22 & 33-293; Remand.

PREMISES AFFECTED – 71-12 Main Street, Block 6619, Lot 132, Borough of Queens.

COMMUNITY BOARD #8Q

Shampa Chanda, Acting Chair/Commissioner

MINUTES

PUBLIC HEARINGS MONDAY-TUESDAY, NOVEMBER 14-15, 2022 10:00 A.M.

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

SPECIAL ORDER CALENDAR

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.

PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, that permitted the use of the Premises as an automobile sales and repair establishment and expired on November 25, 2018, and an amendment to remove the use of automobile sales from the Premises.

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 February 25, 2020, June 14, 2021, and October 3, 2022, and then to decision on November 14, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 13, Queens, recommends approval of this application.

The Premises are bounded by Union Turnpike to the north, 259th Street to the west, 79th Street to the south, and 260th Street to the east, within an R2A zoning district, in Queens. With approximately 132 feet of frontage along Union Turnpike, 10 feet of frontage along 259th Street, 125 feet of frontage along 79th Street, 53 feet of frontage along 260th Street, and 3,900 square feet of lot area, the Premises are occupied by an existing one-story automotive service station with accessory office, sales, and storage.

The Board has exercised jurisdiction over the Premises since November 25, 1958, when, under the subject calendar number, the Board granted a variance to permit the Premises to be occupied by a gasoline service station with accessory

uses. Subsequently, the grant has been amended and the term extended by the Board at various times.

On July 20, 1999, under the subject calendar number, the Board granted an amendment to the variance to permit the conversion of the gasoline service station to an automobile sales and repair establishment, and the term was extended for ten years, to expire on November 25, 2008.

On January 13, 2010, under the subject calendar number, the Board extended the term of the variance for ten years, to expire on November 18, 2018, on condition that all use and operations substantially conform to plans filed with the application; a new certificate of occupancy be obtained by January 13, 2010, and all conditions from prior resolutions not specifically waived by the Board remain in effect.

The term of the variance having expired, the applicant now seeks an extension. The applicant also seeks to amend the variance to reflect that there are no longer automobile sales at the Premises and remove the use accordingly. Over the course of hearings, the Board observed the presence of outdoor automobile lifts, tire racks, poorly maintained stucco walls, and poorly maintained landscaping and raised concern regarding the maintenance of the Premises. In response, the applicant demonstrated the removal of the lifts, tire racks, and excess banners and signage, painted the walls, and replaced landscaping where necessary and replaced curbs to DOT standards.

The Fire Department states, by letter dated September 18, 2019, that a review of their records indicates that the Premises is current with permits for the use of the site as a motor vehicle repair shop and storage of combustible liquids. 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.

Based upon its review of the record, the Board has determined that the requested extension of term and amendment to remove the use of automobile sales are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the variance, dated November 25, 1958, as amended through January 13, 2009, so that as amended this portion of the resolution shall read: “to extend the term for ten years, to expire on November 25, 2028, and remove the use of automobile sales from the Premises, *on condition* that all work, site conditions, and operations shall substantially conform to drawings filed with this application marked “Board Approved November 14, 2022” – Three (3) sheets; and on *further condition*:

THAT the term shall expire on November 25, 2028;

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

THAT there shall be no parking permitted on the sidewalk;

THAT signage shall be maintained and stating that any vehicles parked on the sidewalk shall be towed at the owners’ expense;

THAT there shall be no automobile repairs outside of the building;

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THAT there shall be no automobile sales at the Premises;

THAT Department of Parks and Recreation approval shall be requested and obtained for planting of street trees;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 863-48-BZ"), shall be obtained within 24 months, by November 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;

THAT the Department of Buildings must 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 14, 2022.

348-75-BZ

APPLICANT – Eric Palatnik, P.C., for Moises A. Villadelgado, owner.

SUBJECT – Application March 11, 2022 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement of a then existing two-story building occupied as an animal hospital with an accessory caretaker's apartment which expires on April 3, 2022. R3-2 and R2 zoning district.

PREMISES AFFECTED – 1050 Forest Avenue, Block 315, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term for a variance previously granted by the Board, pursuant to Z.R. § 72-21, which permitted the enlargement of an existing two-story building occupied as an animal hospital with an accessory caretaker's apartment and expired on April 3, 2022.

A public hearing was held on this application on October 4, 2022, after due notice by publication in *The City Record*, and then to decision on November 14, 2022. Community Board 1, Staten Island, recommends approval of this application, on condition that appointment

scheduling be established; board not permitted; clients should be allowed inside the building per regulations; provide two pet waste units along Forest Avenue and monitor and clean; and reduce the usable square footage on the deck to reduce clients on deck.

The Premises are located on the south side of Forest Avenue, between Manor Road and Raymond Place, partially within an R3-2 zoning district and partially within an R2 zoning district, in Staten Island. With approximately 75 feet of frontage along Forest Avenue, an irregular depth ranging from 247 feet to 266 feet, and 20,805 square feet of lot area, the Premises are occupied by an existing three-story building occupied by a Use Group ("UG") 16 animal hospital with an accessory caretaker's apartment.

The Board has exercised jurisdiction over the Premises since March 9, 1976, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 zoning district, the maintenance of a one-story enlargement to an existing two-story building occupied as an animal hospital with an accessory caretaker's apartment, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the variance be limited to a term of five years, to expire on March 9, 1981, and terminate with any change in ownership or control; all laws, rules, and regulations applicable be complied with; and substantial construction be completed within one year, by March 9, 1977.

On May 4, 1982, the Board, under the subject calendar number, waived its Rules of Practice and Procedures and amended the resolution to extend the term of the variance for five years, to expire on March 9, 1986, and permit a change in ownership or control, on condition that the certificate of occupancy include the statement that there be no change of ownership or control of the Premises without application to, and approval from, the Board of Standards and Appeals; 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 4, 1983.

On June 10, 1986, the Board, under the subject calendar number, further amended the resolution to extend the term of the variance for ten years, to expire on March 9, 1996, on condition that other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by June 10, 1987.

On April 3, 2012, the Board, under the subject calendar number, waived its Rules of Practice and Procedures and further amended the resolution to extend the term of the variance for ten years from the date of the grant, to expire on April 3, 2022, on condition that all use and operation substantially conform to plans filed with the application; the term of the grant expire on April 3, 2022; the above condition be reflected on the certificate of occupancy; 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; and the Department of Buildings

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ensure compliance 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 proposed extension of term of the Premises would have no impact on the character of the area in which it is located, as the use at the Premises has existed for more than four decades. Furthermore, the applicant states that the hours of operation for the office are Monday and Thursday from 11 a.m. to 7 p.m. and Tuesday, Friday, and Saturday from 11 a.m. to 5:30 p.m., with the period between 4 p.m. to 5:30 p.m. reserved for surgery.

At hearing and in response to community concerns, the Board expressed concerns about the conditions at the site including the location of trash, pet waste and customer overflow as well as the signage to direct clients. In response, the applicant placed trash containers in the front of the building for pet waste with signage and stated that the staff monitors and cleans the property as needed and submitted updated images of the improvements at the site. Moreover, the applicant stated that customers would wait in one of four waiting rooms and noted that not more than three customers would be on the deck at any time.

Additionally, the applicant submitted an operational plan, committing to the following:

Three people work in the office, one receptionist works in the front, and we have one office manager that works in the back. The office is open Monday and Thursday from 11 a.m. to 7 p.m. and Tuesday, Friday, and Saturday from 11 a.m. to 5:30 p.m. From 4 p.m. to 5:30 p.m. is for surgery. We have about five clients an hour. Appointments typically take about 15 minutes unless they are overly complicated. The receptionist comes in between 10 a.m. and 10:30 a.m. People can schedule appointments, but we also take walk in appointments and let people know approximately how long until their appointment. It is important for us to allow walk in appointments as animals have emergencies that must be treated right away. In response to concerns of the Community Board, we will be placing trash containers outside in the front for pet waste. Our staff monitors and cleans the property as needed. Additionally, due to COVID we were unable to allow customers to wait inside. Now that those restrictions have been lifted, customers wait in our four waiting rooms. We will try ensuring that not more than three customers are on the deck at any one time, and this should not be a problem since guests are now waiting inside.

Based upon its review of the record, the Board has determined that the extension of term of the variance 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 9, 1976 as amended through April 3, 2012, so that as amended this portion of the resolution shall read: “to extend the term of the variance for 20 years, to expire on April 3, 2042, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Board Approved: November 14, 2022 – Seven (7) sheets’; and *on further condition*:

THAT the term of the variance will be for 20 years, to expire on April 3, 2042;

THAT there shall be no change in ownership or control of the Premises without application to and approval from the Board of Standards and Appeals;

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. 348-75-BZ’), shall be obtained within two years, by November 14, 2024;

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 14, 2022.

914-86-BZII

APPLICANT – Klein Slowik, PLLC, for Union Temple of Brooklyn, owner; Eastern Atlantic Inc., lessee.

SUBJECT – Application September 30, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 19, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on December 14, 2011; Amendments to the Board’s conditions on term, Amendment to enlarge the mezzanine; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Adopted by the Board of Standards and Appeals, November 14, 2022.

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CORRECTION: This resolution, adopted on November 14, 2022, under Calendar No. 111-01-BZVI, is hereby corrected to read as follows:

111-01-BZVI

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC., owner; Briad Wencco LLC, lessee.

SUBJECT – Application April 28, 2021 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy's) which expired February 2, 2021; Amendment requesting a change in hours of operation contrary to the previous board approval; Waiver of the Rules. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Block 810, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures ("the Board's Rules"); an extension of term of a previously granted special permit, pursuant to Z.R. §§ 73-243 and 73-03, which legalized a Use Group ("UG") 6 eating and drinking establishment with accessory drive-through and expired on February 2, 2021; and an amendment of the special permit resolution to permit a change to the hours of operation of the accessory drive-through.

A public hearing was held on this application on February 28, 2022, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2022, and then to decision on November 14, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 17, **Error! Reference source not found.** Brooklyn, recommends approval of this application.

The Premises are a through lot bounded by Ditmas Avenue to the south, Remsen Avenue to the west, and East 91st Street to the east, within a C1-2 (R5) zoning district, in Brooklyn. With approximately 200 feet of frontage along Ditmas Avenue, 140 feet of frontage along Remsen Avenue, 100 feet of frontage along East 91st Street, and 24,000 square feet of lot area, the Premises are occupied by an existing one-story eating and drinking establishment with approximately 2,969 square feet of floor area, an accessory drive-through, and 27 accessory parking spaces.

The Board has exercised jurisdiction over the Premises since August 14, 2001, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-243, to permit the operation of an accessory drive-through facility for an eating and drinking establishment on condition that the Premises remain graffiti free at all times;

the hours of operation be limited to Sunday through Thursday, 10:00 a.m. through 11:00 p.m., and Friday and Saturday 10:00 a.m. to 12:00 a.m.; landscaping be maintained in accordance with Board-approved plans; the above referenced conditions be noted 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 DOB; and substantial construction be completed in accordance with Z.R. § 72-23.

On February 1, 2005, under the subject calendar number, the Board amended the resolution to permit a change to the hours of operation of the drive-through facility to 10:00 a.m. to 1:00 a.m., daily, on condition that the term of the grant be for one year, to expire on February 1, 2006; the hours of operation for the drive-through facility be from 10:00 a.m. to 1:00 a.m., daily; upon closure of the main restaurant at 11:00 p.m., the parking areas at the Premises be chained off by restaurant staff so that no vehicle access to these areas is possible; all chains be visible to drivers at nights, in accordance with the note on the Board-approved plans; the above conditions appear on the certificate of occupancy; all landscaping be planted and maintained as indicated on the Board-approved plans, and all trees adjacent to the neighboring residential uses be maintained at a maximum height of 6 feet; all conditions from prior resolutions not subsequently waived or modified 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 17, 2006, under the subject calendar number, the Board further amended the resolution to permit the extension of the term of the special permit for an additional five years from February 1, 2006, to expire on February 1, 2011, and to permit the extension of the hours of operation on condition that there be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board; the term of the grant be for five years from the expiration of the prior grant, to expire on February 1, 2011; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; all garbage removal be performed between the hours of 6:00 a.m. and 1:00 a.m.; the hours of operation for the drive-through be from 10:00 a.m. to 2:00 a.m., Sunday through Wednesday, and 10:00 a.m. to 3:00 a.m., Thursday through Saturday; the parking lot be closed and chained off at 11:00 p.m. each night; the above conditions and all relevant conditions from prior resolutions appear on the certificate of occupancy; signs reading "Please lower your radio as a courtesy to our neighbors", "This area of the parking lot closes at 11:00 p.m.", and "Any comments or suggestions regarding the

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operation of this facility should be directed to the store manager” be prominently posted at the site in accordance with 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) 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 12, 2011, under the subject calendar number, the Board further amended the resolution to permit the extension of the term of the special permit for an additional five years from February 1, 2011, to expire on February 1, 2016, and to permit modifications to the plans for the Premises on condition that the term of this grant expire on February 1, 2016; there be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board; landscaping be maintained in accordance with the Board-approved plans; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; all garbage removal be performed between the hours of 6:00 a.m. and 1:00 a.m.; the hours of operation for the drive-through be limited to Sunday through Wednesday, from 10:00 a.m. to 2:00 a.m., and Thursday through Saturday, from 10:00 a.m. to 3:00 a.m.; the above conditions and all relevant conditions from prior resolutions appear on the certificate of occupancy; a new certificate of occupancy be obtained by July 12, 2012; 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 August 31, 2016, the Board stated that it had no objections to a change of the operator of the eating and drinking establishment at the Premises on condition that DOB ensure compliance with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law; and, to the extent the proposed changes trigger such non-compliance, then the Board's determination have no effect.

On November 21, 2017, under the subject calendar number, the Board further amended the resolution to permit the extension of the term of the special permit for an additional five years from February 1, 2016, to expire on February 2, 2021, on condition that the term of the grant expire on February 1, 2021; there be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board; landscaping be maintained in accordance with the Board-approved plans; the Premises be maintained free of debris and graffiti; any graffiti located at the Premises be removed within 48 hours; all garbage removal be performed between the hours of 6:00 a.m. and 1:00 a.m.; the hours of operation for the drive-through be limited to 9:00 a.m. to 2:00 a.m., daily; the

parking lot be closed and chained off at 11:00 p.m. each night; the above conditions and reference to this calendar number (BSA Cal. No. 111-01-BZ) appear on the certificate of occupancy; signs reading “Please lower your radio as a courtesy to our neighbors”, “This area of the parking lot closes at 11:00 p.m.”, and “Any comments or suggestions regarding the operation of this facility should be directed to the store manager” be prominently posted at the Premises in accordance with the Board-approved plans; a new certificate of occupancy be obtained by November 21, 2018; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to 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 of term and an amendment to the terms of the previously granted special permit to allow for a change to the hours of operation of the accessory drive-through from the previously approved hours of 9:00 a.m. to 2:00 a.m. to the proposed hours of 6:30 a.m. to 2:00 a.m. 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 § 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 submitted photographs of the subject site, taken at various periods after the expiration of the grant, to demonstrate that the subject use has been continuous since the expiration of term. Moreover, the applicant claims that denial of the waiver would jeopardize the continuous use of the business which has been in operation at the Premises for more than two decades and that substantial prejudice would occur without a grant of this waiver to allow for filing of this extension of term.

Over the course of hearings, the Board raised concerns about potential impacts to surrounding residences, including noise caused by the drive-through menu board, the menu board's speaker, and cars in queue; light impacts from lumens emitted by lighting sources at the Premises; and the adequacy of the noise and light buffering provided at the Premises. In response to these concerns, the applicant provided further sound analyses and dimensions of the drive-through menu board. The applicant also submitted photographs and plans depicting a row of 15-foot-tall evergreen trees, shrubs, and other plantings located along the northern border of the Premises which abuts residential properties and a six-foot-tall chain-link fence with privacy slats located along the property line. With regard to noise, the applicant provided plans showing that the drive-through menu board is located approximately 35 feet from the nearest window of an adjacent residential building; represented that the menu board would be operated at a reasonable volume; and, based upon the applicant's

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submitted acoustical report, concluded that the menu board's speaker would be inaudible from within the interior of the adjacent residence.

Based upon its review of the record, the Board has determined that the requested extension of term and amendment 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 *amend* the resolution, dated August 14, 2001, as amended through November 21, 2017, so that as amended this portion of the resolution shall read: "to extend the term for five years, to expire on November 14, 2027, and to permit amendment to the hours of operation for the drive-through, *on condition* that all work, site conditions, and operations shall substantially conform to drawings filed with this application marked 'Board Approved: November 14, 2022' – Ten (10) sheets; and on *further condition*:

THAT the term shall expire on November 14, 2027;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT the Premises shall be maintained free of litter, debris, and graffiti;

THAT any graffiti located at the Premises shall be removed within 48 hours;

THAT landscaping shall be maintained, and replaced as necessary, in accordance with the Board-approved plans;

THAT the hours of operation of the drive-through shall be limited to 6:30 a.m. to 2:00 a.m., daily;

THAT all garbage removal shall be performed between the hours of 6:00 a.m. and 1:00 a.m.;

THAT the parking lot shall be closed and chained off at 11:00 p.m. each night;

THAT signs reading 'Please lower your radio as a courtesy to our neighbors', 'This area of the parking lot closes at 11:00 p.m.', and 'Any comments or suggestions regarding the operation of this facility should be directed to the store manager' shall be prominently posted at the Premises, in accordance with the Board-approved plans;

THAT all lighting sources that are to be located adjacent to residential use shall be shielded from direct view to minimize any adverse effects on surrounding residences;

THAT all signage shall comply with C1 zoning district regulations;

THAT improvements shall be made prior to the issuance of the certificate of occupancy;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 111-01-BZ'), shall be obtained within 18 months, by May 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;

THAT the Department of Buildings must 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 14, 2022.

215-06-BZIV

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; BP Products North America Inc. lessee.

SUBJECT – Application September 30, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on July 21, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a previously granted variance, pursuant to Z.R. § 11-411, which legalized the operation of a Use Group ("UG") 16B gasoline service station with accessory uses in a C1-2 (R4) zoning district and expired on July 24, 2021.

A public hearing was held on this application on November 15, 2021, after due notice by publication in *The City Record*, with continued hearings on May 9, 2022 and September 12, 2022, and then to decision on November 14, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 12, Queens, recommends approval of this application.

The Premises are located on the southeast corner of Hillside Avenue and 202nd Street, within a C1-2 (R4) zoning district, in Queens. With approximately 91 feet of frontage along Hillside Avenue, an irregular depth ranging from 95 feet to 98 feet, and 9,670 square feet of lot area, the Premises are occupied by an existing one-story commercial building with approximately 1,519 square feet of floor area (742 square feet of sales area) comprising an automotive service station and a food service business.

The Board has exercised jurisdiction over the Premises since July 24, 1956, when, under BSA Cal. No. 327-55-BZ, the Board granted a variance, to permit, in a local retail use district, and for a term of 15 years, to expire on July 24, 1971, the erection and maintenance of a gasoline service station, lubricatorium, auto laundry (non-automatic), minor automotive repair shop (with hand tools only), and the parking of motor vehicles awaiting service, on condition

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that all buildings and uses on the Premises be removed and the Premises be levelled substantially to the grade of Hillside Avenue and 202nd Street; the Premises be constructed and arranged substantially as proposed and as indicated on such plans; there be no cellar under the accessory building; the accessory building be of the design and arrangement as proposed; the exterior walls be of face brick, with no windows opening at the rear to the adjoining Premises; 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 gasoline tanks; along the easterly lot line there be erected a masonry wall not less than 5'-6" in height from the street building line to the rear lot line and running along the rear lot line to the accessory building and continuing from the accessory building to the street building line of 202nd Street and along 202nd Street for a distance of approximately 30 feet with suitable terminating posts; where not occupied by accessory building and pumps and proposed planting the Premises, where unbuilt upon, be paved with concrete or asphaltic pavement; the planting area be maintained with suitable planting and protected with curbing not less than eight inches in height and six inches in width above grade; curb cuts be restricted to two curb cuts to Hillside Avenue where shown not over 30 feet in width and one curb cut to 202nd Street within the first 25 feet from the intersection; sidewalks and curbing abutting Premises be reconstructed or repaired to the satisfaction of the Borough President; signs be restricted to permanent signs attached to the façade of the accessory building, facing Hillside Avenue, and to the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the erection within the building line of one post standard at the intersection for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend at right angles to Hillside Avenue for a distance of not more than four feet; any lights for illumination be on metal standards with metal reflectors so arranged as to reflect toward the center of the Premises and away from the adjoining occupancies; there may be minor repairing with hand tools only maintained solely within the accessory building; such portable fire-fighting appliances be maintained as the Fire Commissioner direct; for a similar term there may be parking of motor vehicles awaiting service; all permits be obtained, including a certificate of occupancy and all work completed within the requirements of the Zoning Resolution.

On July 9, 1957, the Board, under BSA Cal. No. 327-55-BZ, amended the resolution to grant an extension of time to complete construction and obtain a certificate of occupancy, on condition that all permits required, including a new certificate of occupancy, be obtained and all work completed within the requirements of the Zoning Resolution.

On July 22, 1957, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to permit modifications to the plans allowing two concrete pump islands, one with three pumps and one with two pumps,

instead of one concrete pump island with three single pumps and one dual pump, on condition that all permits be obtained and all work completed within the requirements of the Zoning Resolution.

On November 16, 1971, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to allow for an extension of the term of the previously granted variance, for a term of ten years, to expire on July 24, 1981, on condition that the sidewalk and curb cut be repaired in accordance with the rules and regulations of the Department of Highways; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

On October 21, 1980, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to permit the erection and maintenance of a gasoline service station, lubricatorium, auto laundry (non-automatic), minor auto repair shop (with hand tools only, and the parking of motor vehicles awaiting service, on condition that the station be operated at all times in such a fashion to minimize traffic congestion; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by October 21, 1981.

On November 15, 1983, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to legalize the existing storage trailer on the Premises to be used for the storage of non-combustibles such as tires, batteries, anti-freeze, and water pumps, on condition that the metal trailer be equipped with heat and smoke detectors tied into a central office connection; hand fire extinguishers be installed in the trailer; the trailer be painted to match the color of the existing building; a new chain link fence, 100% opaque, be installed atop of the existing brick wall adjacent to the trailer; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and other than as amended, the resolution be complied with in all respects.

On June 4, 1985, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to permit the addition of one gasoline pump to each of the existing gasoline pump islands, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and other than as amended, the resolution be complied with in all respects.

On February 6, 1990, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to permit the change in the design and arrangement of the existing automotive service station; erection of a new metal canopy over two new gasoline pump islands with new "MPD" self-serve pumps; and the alteration of the existing sales and office area of the accessory building to accommodate an attendant's booth and to erect a new island shelter on the front island fronting Hillside Avenue, on condition that the missing aluminum slats on the fence along the trailer be replaced and maintained in good condition at all times; the Premises be maintained clean and free of graffiti at all times; the planting be maintained and replaced when

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necessary; the sidewalk on 202nd Street be repaired where required; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and substantial construction be completed within one year, by February 6, 1991; and other than as amended, the resolution be complied with in all respects.

On March 16, 1993, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to extend the term of the previously granted variance, for a term of ten years, to expire on July 24, 2001, and to eliminate the metal storage container and the chain link enclosure and to restore a portion of the grass strips on the 202nd Street side which had been asphalted over, on condition that the previously approved metal container and chain link enclosure fence be removed; the full width sidewalk on the 202nd Street side be installed and adequately maintained; the trees on 202nd Street be installed and replaced when necessary; the sidewalks be repaired; there be no parking of vehicles on the sidewalks; and 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 March 16, 1994.

On March 8, 1994, the Board, under BSA Cal. No. 327-55-BZ, waived its Rules of Practice and Procedures and further amended the resolution to extend the time to obtain a certificate of occupancy, on condition that a new certificate of occupancy be obtained within 32 months from June 30, 1993, by February 30, 1996.

On December 10, 1996, the Board, under BSA Cal. No. 327-55-BZ, further amended the resolution to permit the reduction and alteration of the existing accessory building to create a convenience store and the installation of a metal canopy over four new concrete pump islands, on condition that the street trees and landscaping be adequately maintained; the lighting levels not exceed the limits shown on the Board-approved drawings; the signs conform to the limits shown on the Board-approved drawings; and other than as amended, the resolution be complied with in all respects, and substantial construction be completed within one year, by December 10, 1997.

On July 17, 2007, the Board, under the subject calendar number, further amended the resolution to extend the term of the previously granted variance, on condition that this grant be for a term of ten years from the date of expiration of the grant and expire on July 24, 2011; the above conditions be listed on the certificate of occupancy; the site be brought into compliance with the BSA-approved plans and all conditions of this grant; a new certificate of occupancy be obtained within six months of the date of this grant, by January 24, 2008; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; 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 March 17, 2009, the Board, under the subject calendar number, waived its Rules of Practice and Procedures and further amended the resolution to extend the time to obtain a certificate of occupancy for an existing gasoline service station with accessory convenience store in a C1-2 (R4) zoning district, on condition that the certificate of occupancy be obtained by July 17, 2010; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the 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 29, 2011, the Board, under the subject calendar number, waived its Rules of Practice and Procedures and further amended the resolution to extend the term of a previously granted variance to legalize an existing gasoline service station, and extend the time to obtain a certificate of occupancy, on condition that the term of the grant expire on July 24, 2021; all signage at the site comply with C1 zoning district regulations; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained by March 29, 2012; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the 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. The applicant represents that no changes have been made to the Premises since the last grant and does not request any changes to the subject site in this instant application.

Over the course of hearings, the Board raised concerns about the steel door of the trash enclosure and the northern and western exterior walls of the commercial building requiring painting; three street tree pits located on the sidewalk adjacent to the Premises lacking any trees; and tires located outside the commercial building requiring removal. The Board also questioned the potential adverse effects of an area light mounted on a pole at the southwestern corner of the Premises, adjacent to neighboring residences, and whether there would be adequate light remaining, if the area light were removed, to ensure safety at the southwestern corner. Additionally, the

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Board directed the applicant to confirm the status of the remediation occurring at the Premises, and to provide further detail in the operational plan regarding the protocol for the maintenance and monitoring of the Premises. In response to the Board's concerns, the applicant submitted photographs showing the applicant removed excess tires, painted the exterior walls of the commercial building and the steel door of the trash enclosure, and removed the area light that was located on the southwestern corner of the Premises. Moreover, the applicant submitted revised plans depicting proposed landscaping to be planted on the Premises and proposed street trees to be planted in the three adjacent street tree pits. The applicant also submitted a lumens' spread study which found that the light emitted onto the southwestern corner by the streetlight located across the street, and by the soffit lights of the commercial building on the Premises, together provide adequate lighting, without the area light, to ensure safety at the southwestern corner. Furthermore, the applicant submitted correspondence, dated August 22, 2022, stating that the New York State Department of Environmental Conservation approved the applicant's request to permanently shut down the remedial system on the Premises. Furthermore, the applicant submitted a revised operational plan committing to the following maintenance and monitoring at the Premises:

The BP Products N.A., Inc. ("BP") gas service station is equipped with security cameras on the building that monitor the entirety of the site and function 24 hours a day, 7 days a week. The security camera system will additionally be utilized to view customer vehicles via a closed-circuit television monitor in the attendant area so that customers can be observed. An attendant will monitor both the property and the sidewalk during normal business hours to ensure vehicles visiting the station will only park on site in designated parking stalls and not on the sidewalk. If vehicles are observed parking on the sidewalk, the vehicle owner will be immediately notified to move their car to an on-site parking stall or find another location off of the property parking (i.e., side street) until such time an on-site parking stall becomes available. BP will monitor the site and notify operators to remove items, including tires, if BP observes items being sold outside. BP will ask that they be placed inside the building. If the site is not being managed per the BSA resolution, BP will give the operator a chance to correct and will inform the operator that they are out of compliance.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby amend the resolution, dated July 24, 1956, so that as amended through March 29, 2011 this portion of the resolution shall read: "to extend the term of the special permit for ten years, to expire on July 24, 2031,

on condition that all work and site conditions shall substantially conform to drawings filed with this application marked 'Board Approved: November 14, 2022' — Six (6) sheets; and on further condition:

THAT the grant shall be for a term of ten years, to expire on July 24, 2031;

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

THAT all lighting sources that are to be located adjacent to residential use shall be shielded from direct view to minimize any adverse effects on surrounding residences;

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 215-06-BZ'), shall be obtained within two years, by November 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;

THAT the Department of Buildings must 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 14, 2022.

CORRECTION: This resolution adopted on November 14, 2022, under Calendar No. 174-07-BZ, is hereby corrected to read as follows:

174-07-BZIII

APPLICANT – Eric Palatnik, P.C., for REMICA Property Group Corp., owner; BOLLA EM Realty, LLC, lessee.

SUBJECT – Application April 22, 2020 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of an automotive service station (UG 16B), which expired on June 17, 2018; Extension of Time to Obtain a CO which expired on June 17, 2016; Waiver of the Board's Rules of Practice and Procedure. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, Block 6758, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures ("the Board's Rules"); an extension of term of a previously granted special permit, pursuant to Z.R. § 73-211, which legalized the operation of

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a Use Group ("UG") 16B automotive service station with accessory uses in a C2-3 (R7A) zoning district and expired on June 17, 2018; and an extension of time to obtain a certificate of occupancy.

A public hearing was held on this application on April 11, 2022, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2022, and then to decision on November 14, 2022. Community Board 14, Brooklyn, recommends approval of this application.

The Premises are located on the northeastern corner of Coney Island Avenue and Avenue P, within a C2-3 (R7A) zoning district, in Brooklyn. With approximately 148 feet of frontage along Coney Island Avenue, 100 feet of frontage along Avenue P, and 16,626 square feet of lot area, the Premises are occupied by an existing UG 16B automotive service station with six self-service gasoline dispensers beneath a steel canopy, nine accessory parking spaces, storage sheds and a masonry trash enclosure with steel gates in the northeast corner of the Premises, and an accessory convenience store with approximately 2,500 square feet of floor area.

The Board has exercised jurisdiction over the Premises since June 26, 1919, when the Board, under BSA Cal. No. 368-19-BZ, granted a variance to permit, in a business district, the erection of a one-story garage for more than five cars on condition that any permits necessary for the prosecution of the work be obtained within nine months of the date of the action, by March 26, 1920; and the building be completed within 18 months of the date of the action, by December 26, 1920.

On January 24, 1950, the Board, under BSA Cal. No. 368-19-BZ, granted a variance, to permit, within a business use district, the erection and maintenance of an automobile showroom for new and used cars and a gasoline service station on balance of plot, with show windows and curb cuts more than the permitted distance from the intersection on condition that all buildings, billboard signs and uses on the Premises be removed and the plot be leveled substantially to the grade of Coney Island Avenue and Avenue P; the building as proposed to be erected for auto showroom be used solely for that purpose and for no other use; the front portion of the Premises be paved with concrete or tarvia or other reasonably impervious material and used only for entrance to the auto showroom and for the dispensing of gasoline; for this purpose, there be erected not more than two dispensing pumps of the low height type as approved by the Board, facing Coney Island Avenue and not over five 550-gallon gasoline storage tanks; the entrances to the gasoline selling portion of the Premises be from Coney Island Avenue where two crossings may be permitted with curb cuts not over 20 feet in width and one crossing from Avenue P within 5 feet of the intersection of Coney Island Avenue with curb cut not to exceed 20 feet; no other cuts be constructed on Avenue P; the boiler room, if constructed below grade as proposed, be of fireproof construction and be enterable only from the exterior; the wall of the adjoining building to the north be surfaced with stucco as indicated on such revised plans; signs be restricted to signs as permitted

under the Zoning Resolution and the illuminated globes of the pumps, excluding all roof signs and all temporary signs but permitting the erection within the building line near the intersection of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line for a distance of not more than 4 feet; a concrete island for pedestrian protection be erected within the building line at the intersection extending for a distance of not less than 5 feet from the intersection; the sidewalks and curbs be restored, reconstructed or repaired to the satisfaction of the Borough President; there at no time be constructed any connection to adjoining Premises; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; before filing plans with the Department of Housing and Buildings complete working drawings be submitted to the Board for approval including the proposed use of the mezzanine not now shown; such plans be submitted within three months; all permits be obtained and all work completed within one year after the approval by the Board of such working drawings.

On October 17, 1950, the Board, under BSA Cal. No. 368-19-BZ, approved plans marked "Received August 29, 1950" (5 sheets, 3 sets) as being in substantial accord with the requirements of the resolution adopted by the Board on January 24, 1950.

On July 20, 1951, the Board, under BSA Cal. No. 368-19-BZ, amended the resolution to permit change in the arrangement of the Premises as indicated on plans received, marked "July 17, 1951," two sheets, on condition that the two additional pumps shown on such plans located parallel to Avenue P be moved northerly so as to be east of the storage tanks shown and in line with the pumps facing on Coney Island Avenue and parallel thereto; in all other respects the resolution as adopted by the Board, January 24, 1950, be complied with, including the approval of plans as adopted October 17, 1950; there may be minor repairs in connection with the car washing and lubrication, provided such repairs are by hand tools only and are done entirely within such section of the building; and all permits be obtained and all work completed within the requirements of the Zoning Resolution.

On October 23, 1951, the Board, under BSA Cal. No. 368-19-BZ, further amended the resolution to extend the term of the variance for a term of 15 years from October 23, 1951, to expire on October 23, 1966, on condition that the resolution adopted January 24, 1950, as amended July 20, 1951, be complied with.

On September 9, 1952, the Board, under BSA Cal. No. 368-19-BZ, further amended the resolution to permit that the number of gasoline storage tanks may be six 550-gallon tanks, located parallel to the Avenue P building line, and to permit the rearrangement of toilet rooms, all as indicated on revised plan, marked "Received July 7, 1952," on condition that in all other respects the resolution be complied with.

On June 25, 1957, the Board, under BSA Cal. No. 368-19-BZ, denied an application for a new variance for the

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unexpired term of the previously granted variance to maintain in the present gas station, storage of auto parts, car wash, lubrication and office; relocate the use of minor auto repairs to the area occupied by the automobile showroom, which was to be removed; and use said area for two additional lubrication lifts.

On November 1, 1966, the Board, under BSA Cal. No. 368-19-BZ, further amended the resolution to extend the term of the variance for a term of ten years from November 1, 1966, to expire on November 1, 1976, on condition that other than as amended the resolution be complied with in all respects; and a certificate of occupancy be obtained.

On June 6, 1967, the Board, under BSA Cal. No. 368-19-BZ, further amended the resolution to permit that the gasoline pumps may be rearranged and located where shown on revised drawing of proposed conditions, marked "Received April 17, 1967," one sheet, on condition that on Avenue P only one curb cut be permitted; either the existing 20-foot curb cut may be retained or the proposed 30-foot curb cut substituted for it and located where shown; and other than as amended, the resolution above cited be complied with in all respects.

On September 14, 1982, the Board, under BSA Cal. No. 215-82-A, granted an appeal from a decision of the Borough Superintendent to permit the use of self-service gasoline pumps on condition that (1) a trained attendant who possesses a certificate of fitness be on duty at all times when the station is open for business; (2) it be the attendant's duty to require the engine of any vehicle be shut off before the start of the fuel operation, and to prohibit smoking within the immediate area of the fuel operation; (3) it be the attendant's duty to prevent the dispensing of fuel into portable containers; (4) signs reading "NO SMOKING," "STOP YOUR ENGINE," "IT IS UNLAWFUL TO DISPENSE GASOLINE INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER" be conspicuously posted in clear view of the customer at the dispensing island; (5) portable fire extinguishers be provided and, in type, quantity and location, they be acceptable to the Fire Commissioner; (6) all dispensing devices and fire suppression systems be approved by the Board and installed in accordance with the requirements of the laboratory upon which the approval is based; (7) the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; (8) the installation and use of coin-operated dispensing devices for fuel be prohibited; (9) there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system which be maintained in a proper operating condition at all times; (10) all controls, devices, fire suppression systems and fire-fighting equipment be maintained in good operating order at all times; (11) a maintenance log be kept on the Premises as per direction of the Fire Commissioner; (12) all dispensing

nozzles be of the automatic closing type without hold open latches; (13) a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, and said instructions be at the direction of the Fire Commissioner; (14) the dispensing areas, at all times, be well lit for complete visual control; (15) the permit to operate this station be for a term of five years from the date of this approval, to expire on September 14, 1987; (16) all of the conditions set forth in the resolution be conspicuously posted in the attendant's booth; (17) there be no servicing or repair of motor vehicles outside of the building; (18) mirrors be provided which ensure the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; the building, equipment, devices and controls substantially conform to drawings filed with this application, marked "Received April 16, 1982," one sheet, and "Received July 7, 1982," one sheet; substantial construction be completed within one year of the date of this resolution, by September 14, 1983; and all applicable laws, rules and regulations be complied with.

On June 7, 1988, the Board, under BSA Cal. No. 215-82-A, waived the Board's Rules and further amended the resolution to extend the term of the variance for a term of five years from September 14, 1987, to expire on September 14, 1992, on condition that a trained attendant who possesses a certificate of fitness, as described, be on duty at all times to monitor the operation of the pumps, have no other duties while any self-service pump is in operation, and be located in an enclosure separated from all other activities by partitions not less than 7' in height; the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump and the gauges for the tanks serving the fire suppression system be positioned so as to be easily readable; manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and these switches be located adjacent to each other and within 5' of the console which controls the self-service operation; the windows and the glass panels of the control booth remain clear and unobstructed at all times; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and other than as amended, the resolution above cited be complied with in all respects.

On June 17, 2008, the Board, under BSA Cal. No. 174-07-BZ, granted a special permit, pursuant to Z.R. §§ 73-211 and 73-03, to permit the operation of the existing automotive service station within a C2-3 (R7A) zoning district, elimination of the automotive repair service, construction of an accessory convenience store and a new metal canopy for the fuel dispensing area, increase of the number of fueling positions from four to 12, and replacement of existing fuel storage tanks on condition that the term of this grant be for ten years, to expire on June 17, 2018; signage comply with C2-3 zoning district regulations and be limited to that indicated on the Board-approved

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plans; the above conditions appear on the certificate of occupancy; the site be maintained clean and free of debris and graffiti; 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 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.

On June 10, 2014, the Board, under BSA Cal. No. 174-07-BZ, further amended the resolution to permit modifications to the Premises and extend the time to complete construction for a term of four years from the expiration date of the previous grant, to expire on June 17, 2016, on condition that the Department of Transportation, the Metropolitan Transportation Authority, and any other required approvals for the relocation of the bus stop along Coney Island Avenue be obtained prior to the issuance of a DOB permit; lighting, signage, and site circulation be in accordance with the Board-approved plans; garbage collection be limited to three days per week between the hours of 7:30 a.m. and 7:30 p.m.; the above conditions appear on the certificate of occupancy; substantial construction be completed by June 17, 2016; all conditions from prior resolutions not specifically waived by the Board remain in effect; DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the special permit having expired, the applicant now seeks an extension of term of the special permit, pursuant to Z.R. § 73-211, which legalized the operation of the automotive service station with accessory convenience store in a C2-3 (R7A) zoning district and expired on June 17, 2018; and an extension of time to obtain a certificate of occupancy. Because this application was filed more than one year but 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 § 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 submitted photographs of the Premises, taken after the expiration of term, to demonstrate that the subject use has been continuous since such expiration. Moreover, the applicant represents that substantial prejudice would result without the waiver because the automotive service station has been in operation since 1982 and the Premises have been under the Board's jurisdiction since 1919; therefore, absent the Board's waiver, the longstanding use at the Premises would cease operation and revert to a conforming use.

Over the course of hearings, the Board directed the applicant to provide photographs of the area adjacent to the northern lot line, behind the convenience store, to ensure the Board could inspect images of the entire perimeter of the Premises, and to help the Board to visualize the "gravel over

weed barrier" indicated on the plans. The Board also questioned, based on satellite imagery, whether the area adjacent to the northeastern and eastern lot lines on the Premises was landscaped, as notated on the plans approved by the Board in 2014 which indicated such area would be landscaped. The Board also observed that the plans lacked labeling for some of the shapes drawn on the plans and directed the applicant to label such items. Furthermore, the Board noted that, according to the applicant's lumen spread study of the eastern property line, which abuts neighboring residences, the lumen readings were high, and the Board directed the applicant to communicate with residential neighbors and adjust the lighting sources along the property line to reduce the level of light cast onto such residences without reducing light inordinately and negatively impacting safety. The Board suggested the lumen level at the eastern property line be close to a lumen level of one (1.0).

The applicant, in response to the Board's questions and concerns, submitted additional photographs of the Premises showing the area behind the convenience store and the appearance of the gravel located there. The applicant also represented at hearing that the gravel was intended for drainage purposes. Furthermore, the applicant submitted revised plans labeling the previously unlabeled shapes drawn on the plans, which were drainage inlets; depicting the existing/proposed landscaping plantings; showing the latest lumen readings conducted at the eastern property line; and noting the placement of light shields on the existing light fixtures, which are located adjacent to the eastern lot line abutting neighboring residences. The applicant also submitted a compliance checklist illustrating the applicant's compliance with the conditions of the previous resolutions.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated June 17, 2008, as amended through June 10, 2014, so that this portion of the resolution shall read: "to extend the term of the special permit for ten years, to expire on June 17, 2028, and extend the time to obtain a certificate of occupancy for two years, to expire on November 14, 2024, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked 'Board Approved: November 14, 2022' — Thirteen (13) sheets; and *on further condition*:

THAT the grant shall be for a term of ten years, to expire on June 17, 2028;

THAT all lighting sources that are to be located adjacent to residential use shall be shielded from direct view to minimize any adverse effects on surrounding residences;

THAT should there be any issue raised by the neighbors regarding lighting, the applicant must take necessary steps immediately to reduce the lumen level including, and not limited to, shielding, relocating, or lowering the height of the light poles;

THAT lighting, signage, and site circulation shall be in

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accordance with the Board-approved plans;

THAT garbage collection shall be limited to threedays per week between the hours of 7:30 a.m. and 7:30 p.m.;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 174-07-BZ'), shall be obtained within two years, by November 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;

THAT the Department of Buildings must 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 14, 2022.

2016-4230-BZII

APPLICANT – Eric Palatnik, P.C., for Muslim American Society of Upper New York, owner.

SUBJECT – Application May 11, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a House of Worship (UG 4A) which expired on April 18, 2022. C8-1 zoning district.

PREMISES AFFECTED – 1912 Amethyst Street, Block 4254, Lot 11, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction pursuant to a previously granted variance which authorized the development of a Use Group ("UG") 4 house of worship in a C8-1 zoning district and granted four years to complete substantial construction, which expired on April 18, 2022.

A public hearing was held on this application on October 3, 2022, after due notice by publication in *The City Record*, and then to decision on November 14, 2022.

The Premises are located on the east side of Amethyst Street, between Rhinelander Avenue and Sagamore Street, within a C8-1 zoning district, in the Bronx. With approximately 100 feet of frontage along Amethyst Street, 95 feet of depth, and 9,500 square feet of lot area, the Premises are occupied by a completed foundation.

The Board has exercised jurisdiction over the Premises

since April 17, 2018, when the Board, under the subject calendar number, granted a variance to permit the construction of a proposed three-story house of worship with a cellar, 22,756 square feet of floor area, and bulk parameters contrary to the front wall height, setback, and parking requirements of Z.R. §§ 33-432 and 36-21, on condition that the following be the bulk parameters of the building: a front setback of at least 15 feet above a 35-foot front wall, obstructions penetrating the sky exposure plane and at least zero parking spaces, as indicated on the Board-approved plans; an E designation (E-473) be placed on the site to ensure proper hazardous materials remediation; the façade materials be brick, brick veneer, split-faced block, and stone veneer, as shown on the Board-approved plans; no unfinished concrete block or EIFS be permitted on a visible façade of the building; a site manager be utilized to manage parking and drop offs at the site to deter double and triple parking and ensure that travel lanes remain unobstructed; substantial construction be completed pursuant to Z.R. § 72-23, by April 18, 2022; a certificate of occupancy be obtained within four years, by April 18, 2022; this 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); 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 under the variance having expired, the applicant now seeks an extension, for four years, of time to complete construction of the proposed UG 4 house of worship.

At hearing, the Board questioned the accuracy of the construction timeline initially submitted by the applicant, and the Board directed the applicant to correct the dates listed in the timeline and in the statement of facts and findings. In response to the Board's concerns, the applicant represented at hearing that the timeline and the statement of facts and findings would be revised to correct the incorrect dates noted by the Board. Furthermore, the applicant stated at hearing that the timeline required revision of the expected dates of completion and DOB approval not only because of typographical errors, but also due to delays caused by DOB's review of the state of the water main and sewer connection at the Premises. Following hearing, the applicant submitted a revised construction timeline and a corrected statement of facts and findings with accurate estimated dates of completion and DOB approval.

Based upon its review of the record, the Board has determined that the 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 April 17, 2018, so that this portion of the resolution shall read: "to extend the time to complete construction for four years, to

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expire on April 18, 2026, *on condition*:

THAT substantial construction shall be completed within four years, by April 18, 2026;

THAT the following shall be the bulk parameters of the building: a front setback of at least 15 feet above a 35-foot front wall, obstructions penetrating the sky exposure plane, and at least zero parking spaces, as indicated on the Board-approved plans;

THAT an E designation (E-473) shall be placed on the site to ensure proper hazardous materials remediation;

THAT the façade materials shall be brick, brick veneer, split faced block, and stone veneer, as shown on the Board-approved plans;

THAT no unfinished concrete block or EIFS shall be permitted on a visible façade of the building;

THAT a site manager shall be utilized to manage parking and drop offs at the site to deter double and triple parking and ensure that travel lanes remain unobstructed;

THAT a certificate of occupancy shall be obtained within four years, by April 18, 2026;

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 all conditions from prior resolution(s) 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 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, November 14, 2022.

164-60-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciana Azizian, owner.

SUBJECT – Application March 8, 2022 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on April 10, 2019; Waiver of the Board’s Rules of Practice and Procedures. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 100-20 Metropolitan Avenue, Block 3895, Lot 32, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

663-63-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for New Dorp Baptist Church, Inc., owner.

SUBJECT – Application July 26, 2019 – Amendment of previously approved Special Permits (§§73-452 & 73-641). The amendment seeks the proposed enlargement of an existing house of worship (UG 4) (New Dorp Baptist Church) and school (UG 3) (New Dorp Baptist Academy). R3X zoning district.

PREMISES AFFECTED – 46 10th Street, Block 4220, Lot 0029, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for a adjourned hearing.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe La Sorsa, owner.

SUBJECT – Application October 4, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2022. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415/17 East 92nd Street, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for a adjourned hearing.

197-05-BZ

APPLICANT – Law Office of Jay Goldstein, for 813 & 815 Broadway LLC, owner.

SUBJECT – Application August 8, 2022 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial which expires on April 29, 2022; Extension of Time to Obtain a Certificate of Occupancy; Amendment of the Board’s condition that no further extension be considered; Waiver of the Board’s Rules. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, Block 563, Lot 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

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203-15-BZV

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Redding Tammany Owner LLC, owner.

SUBJECT – Application June 22, 2022 – Amendment of a previously approved Variance (§72-21) which permitted the restoration, reuse, and enlargement of an existing commercial building. The amendment seeks to modify a Board condition that to allow deliveries and trash removal for the retail tenant to occur in the commercial zoning district rather than the residential district as approved. C6-4 and R8B Special Union Square District.

PREMISES AFFECTED – 44 Union Square East, Block 872, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

2017-304-BZ

APPLICANT – Barbara Resnicow, for La Mirada-Schippers LLC, owner; Brooklyn Prospect Charter School, lessee.

SUBJECT – Application June 9, 2022 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-19) permitting the development of a school which expired on August 20, 2022. M1-2D zoning district.

PREMISES AFFECTED – 156-160 17th Street, Block 630, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens. Block 15510, Lot 0011

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings, dated July 22, 2022, acting on Alteration Type 1 Application No. 421723594 reads, in pertinent part: “BB 2014-001, GCL 35: This lot is within the base of the mapped street. The proposed is contrary to GCL 35 on BB 2014-001”.

This is an application under General City Law (“GCL”) § 35 to permit, in an R3X zoning district, the enlargement of an existing two-story, single-family residence with a portion located within the bed of a mapped street and within the street widening line, contrary to General City Law (“GCL”) § 35.

A public hearing was held on this application on September 23, 2021, after due notice by publication in *The City Record*, and then to decision on November 14, 2022. Community Board 14, Queens, waives its recommendation of the application.

The Premises are located on the southeast side of Alonzo Road, between Virginia Street and Harris Street, within an R3X zoning district, in Queens. With approximately 60 feet of frontage along Alonzo Road, an irregular depth ranging from 142 feet of 148 feet, and 8,704 square feet of lot area, the Premises are occupied by a two-story, single-family residence.

The applicant proposes to enlarge the existing residence by two stories at the rear of the existing building. The applicant states that the proposed enlargement would comply and conform to requirements of the underlying R3X zoning district, including providing the required parking, as per Z.R. § 25-211. The applicant requests a GCL § 35 waiver as the proposed enlargement is located within the bed of Harris Street, a mapped street. The applicant represents that the City has never taken any action for improvement or utilization of Harris Street, as the creation of State Route 878 allows for Harris Street to be discontinued in usage. The applicant states that any improvement of Harris Street, specifically on the portion

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embedded on the subject site, would necessitate demolition of the existing single-family residence.

By letter dated July 2, 2020, the NYC Department of Transportation (“DOT”) states according to the Queens Borough President’s Topographical Bureau, Harris Street between Alonzo Road and Empire Avenue/Nassau County Line is mapped at a width of 50 feet, has a Corporate Counsel Opinion (“CCO”), dated May 2, 1991, for a width of 40 feet, and the City does not have title to a portion. The improvement of Harris Street at this location, which would involve the taking of a portion of the application’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. Please note that there is a large storm and sanitary sewer project to take place on Alonzo Road which may or may not affect future development of this site.

By letter dated November 21, 2022, the Fire Department, Bureau of Operations and Fire Prevention states a preliminary review of its records shows compliance with applicable rules and regulations of the Fire Department of the City of New York with respect to fire apparatus access road and location of fire hydrants. It is understood that all legal requirements, including those outlined in the 2022 New York City Fire Code and the New York City Construction Codes, must be complied with by the applicant. Based upon the foregoing, the Fire Department issues a “Letter of No Objection” to the application. If conditions are found not to be in compliance with the NYC Fire Code, the Fire Department will notify the Board of Standards and Appeals of such noncompliance.

By letter dated October 14, 2022, the New York City Department of Environmental Protection (“DEP”) states there is a 10" diameter (“dia.”) sanitary sewer and an 8" dia. water main in the bed of Harris Street, between Alonzo Road and Empire Avenue, that start outside of the limit of Lot 11. There is a 6" dia. sanitary drain and an 8" dia. water main in the bed of Alonzo Road, east of Virginia Street. The Drainage Plan # 50SW (83)/50S (112), Sheet 2 of 12, dated March 22, 2019, shows sanitary and storm sewers in the bed of Harris Street between Alonzo Road and Empire Avenue. It also shows 10" dia. sanitary sewer and 12" dia. storm sewer in the bed of Alonzo Road, east of Virginia Street.

The applicant has submitted a Site Plan T-100.00, dated January 19, 2022. The plan shows 60'-0" width of the mapped Alonzo Road, east of Virginia Street, from which 40' will be available for the installation, maintenance and or reconstruction of the future and existing sewers and water main. 10" dia. existing sanitary sewer and 8" dia. existing water main in Harris Street, between Alonzo Road and Empire Avenue, start outside the limits of Lot 11. Future sanitary sewer and storm sewer in Harris Street, between Alonzo Road and Empire Avenue, may start outside the limits of Lot 11. Based on the above, the NYC DEP has no objections to the proposed GCL 35 application.

At hearing, the Board raised concerns regarding the bulk specifications of the existing residence and proposed enlargement, specifically if a waiver of Z.R. § 72-01(g) was necessary in the subject application. In response, the

applicant submitted a revised DOB objection sheet which clarified that Z.R. § 72-01(g) is inapplicable in this case and such waiver was not required and submitted revised plans which clarified the proposed and existing dimensions at the subject site.

Accordingly, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated July 22, 2022, acting on Alteration Type 1 Application No. 421723594, under the powers vested in the Board by Section 35 of the General City Law, to *permit* the enlargement of a building located within the bed of a mapped street, *on condition* that all work and site conditions shall conform to drawings filed with this application marked ‘Board Approved: November 14, 2022’ — Two (2) sheets; and *on further condition*;

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, November 14, 2022.

2021-20-A & 2021-21-A

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

SUBJECT – Application March 16, 2021 – Proposed development of a three-story residential building within the bed of a mapped street contrary to General City Law § 35. R3-1 Lower Density Growth Management Area.

PREMISES AFFECTED – 106 & 108 Winham Avenue, Block 4049, Lot (s) 49, 48, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

I.

The decision of the Department of Buildings, dated February 25, 2021, acting on New Building Application Nos. 540190675 and 540190684 reads in pertinent part: “Proposed construction in the bed of a finally mapped street is contrary to Article III, Section 35 of the General City Law, and must be referred to the Board of Standards and Appeals.”

This is an application under General City Law (“GCL”) § 35 to permit, in an R3-1 zoning district and a Lower Density Growth Management Area, the construction of two three-story, semi-detached, single-family residences

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located within the bed of a mapped street.

A public hearing was held on this application on April 26, 2022, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2022, and then to decision on November 14, 2022. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the east side of Winham Avenue, between Celtic Place and Clayborn Street, within an R3-1 zoning district and a Lower Density Management Area, in Staten Island. With approximately 50 feet of frontage along Winham Avenue, 145 feet of depth, and 7,206 square feet of lot area, the Premises are currently occupied by a one-story residence with a garage.

II.

GCL §35, in relevant part, provides that the Board may approve permits for development within the bed of mapped streets, as follows:

Where a proposed street widening or extension has been shown on such official map or plan for ten years or more and the City has not acquired title thereto, the City may, after a hearing on notice as hereinabove provided, grant a permit for a building and/or structure in such street or highway and shall impose such reasonable requirements as are necessary to protect the public interest as a condition of granting such permit, which requirements shall inure to the benefit of the City.

III.

The applicant proposes to apportion the existing tax lot into two new separate zoning and tax lots (proposed lots 48 and 49), each to be developed with a three-story, semi-detached, single-family residence. The applicant represents that proposed lot 49 to the north would be 106 Winham Avenue and would be 3,588 square feet, and lot 48, to the south, would be 3,588 square feet. The applicant conforms that each proposed residence would conform and comply to all applicable use and bulk requirements of the underlying R3-1 zoning district, including that of the Lower Density Growth Management Area. The applicant represents that each proposed residence would have 2,038 square feet of floor area with 0.60 FAR at 106 Winham and 0.56 FAR at 108 Winham with two accessory parking spaces proposed in a garage at the basement level.

As per the requirements under GCL § 35, the applicant represents that as the proposed residences would be located partially within a mapped but unbuilt portion of Marine Way, an existing street on the official City map that is currently paved and improved to the east of the subject Premises and running from Cedar Gove Avenue to Milton Avenue. The applicant represents that a mapped but unbuilt portion of Marine Way extends from Milton Avenue to Winham Avenue, through the center of the subject block, and Marine Way terminates on the City map at Winham Avenue. The applicant further represents that the City has never taken any action toward the acquisition of the subject property, and such acquisition is not reasonably possible as the City of New York would have to develop this portion of

the street as it would be duplicative of an alternate access and only extend through the subject block, and any development between Milton Avenue and Winham Avenue would necessitate condemnation and demolition of existing buildings located at 103 and 105 Milton Avenue.

IV.

By letter dated November 11, 2022, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application materials. A preliminary review of its records shows compliance with applicable rules and regulations of the Fire Department of the City of New York with respect to fire apparatus access road and location of fire hydrants. In addition to filing with the FDNY, the applicant is also required to call the Bureau of Facilities Management, Plant Operations Engineering office to schedule an appointment to evaluate plans for any municipal fire alarm box requirements. To expediate their review, please provide a survey of all fire alarm box 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, please indicate all utility poles with their identification numbers. It is understood that all legal requirements, including those outlined in the 2022 New York City Fire Code and the New York City Fire Code and the New York City Construction Codes must be complied with by the applicant. Based upon the foregoing, the Fire Department issues a "Letter of No Objection" to the application. If conditions are found not to be in compliance with the NYC Fire Code, the Fire Department will notify the Board of Standards and Appeals of such non-compliance.

By letter dated October 6, 2022, the New York City Department of Transportation ("DOT") states that according to the Staten Island Borough President's Topographical Bureau, Marine Way between Winham Avenue and Milton Avenue is mapped at a width of 60 feet, and the City does not have title. The improvement of Marine Way 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.

At hearings and in response to comments from the NYC Department of Environmental Protection ("DEP"), the Board raised concerns regarding the existing and proposed dimensions at the subject site. Specifically, the Board requested that the site plan depict the sewer, water main, and the distances between the proposed lots as the existing survey reflects a singular lot. In response, the applicant submitted a revised site plan which included proposed lot 49, as entirely within the mapped but unbuilt portion of Marine Way that runs from Winham Avenue to Milton Avenue; Lot 48 with a 14.13' dimension for the portion of the lot that is outside of the mapped but unbuilt portion of Marine Way, with the corresponding width of the widening portion as 10.87'. Furthermore, the applicant represented that the proposed improvement to its drainage plans would be made concurrently with other improvements to the subject site.

Accordingly, the Board has determined that this

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approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated February 25, 2021, acting on New Building Application Nos. 540190675 and 540190684, under the powers vested in the Board by Section 35 of the General City Law, to *permit* the construction of two, three-story, semi-detached, single-family residences located within the bed of a mapped street *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: November 14, 2022”- One (1) sheet; and *on further condition*:

THAT the amended drainage plans shall be amended and approved to the satisfaction of DEP and all other relevant agencies prior to the issuance of a temporary certificate of occupancy (“TCO”);

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. Nos. 2021-20-A & 2021-21-A”), shall be obtained within four years, by November 14, 2026;

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 14, 2022.

2021-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Block 7206 Industrial LLC, owner.

SUBJECT – Application March 16, 2021 – Proposed development of a two-story office and warehouse building (UG 6 & UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 500 Industrial Loop, Block 7206, Lot 66, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated February 19, 2021, acting on Alteration Type 1 Application No. 540195796 reads, in pertinent part: “Proposed building which does not front on a legally mapped street is contrary to Article III, Section 36 of the General City Law, therefore obtain Board of Standards and Appeals approval.”

This is an application under General City Law (“GCL”) § 36 to permit, in an M3-1 zoning district and the Special South Richmond District, the proposed development of a two-story office and warehouse building (Use Group (“UG”) 17B), not fronting on a legally mapped street.

A public hearing was held on this application on October 4, 2022, after due notice by publication in *The City Record*, and then to decision on November 14, 2022. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the east side of Industrial Loop, between Shamrock Avenue and Industrial Loop, within an M3-1 zoning district and the Special South Richmond District, in Staten Island. With approximately 108 feet of frontage along Industrial Loop, 193 feet of depth, and 20,509 square feet of lot area, the Premises are currently vacant.

II.

GCL § 36 (2) states, in part:

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

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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.

III.

The applicant proposes to develop the Premises with a two-story manufacturing building (UG 17B). The applicant states that the proposed structure would have 20,509 square feet of floor area (0.98 FAR); 20 accessory parking spaces to be located on the southern portion of the subject lot as required under Z.R. § 44-21; and 1 loading berth as required under Z.R. § 44-52. Furthermore, the applicant notes that the proposed building would be sprinklered pursuant to the pertinent provisions of the New York City Fire Code. Finally, the applicant states that the proposed building complies and conforms to all requirements of the underlying M3-1 zoning district and all the requirements of the Special South Richmond District.

The applicant first describes how Industrial Loop is already an existing private road that currently provides access to several lots north of Arthur Kill Road, all either containing commercial/manufacturing uses or are vacant. Furthermore, pursuant to the GCL § 36 requirements, the applicant represents that the subject lot is only accessible from Industrial Loop, so the requirement that the Premises be accessible from a street duly placed on the official City map results in practical difficulty and unnecessary hardship in development of the subject lot. The applicant represents that without use of the unmapped Industrial Loop, it would be impossible to access the subject site. The applicant further states that development of the lot does not require the proposed structure to be related to any existing mapped streets or highways since Industrial Loop is currently paved and improved, providing access to several existing buildings in the vicinity of the subject site, and additionally has an existing water main and sanitary sewer present beneath Industrial Loop.

IV.

By letter dated November 10, 2022, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application materials and has no objection to the application.

V.

At hearing, the Board requested that the applicant respond to the New York City Department of Environmental Protection (“DEP”) comments requesting that (1) the applicant to submit a corporation counsel opinion (“CCO”), (2) a certified Site Connection Proposal (“SCP”) showing the proposed method of disposing the internal sanitary and storm, and (3) proposed plans showing the method of connection to the water main for the new development.

In response, the applicant attested that no CCO has been issued for Industrial Loop as it is a private road. With respect to DEP’s request that an SCP be filed for the subject site, the applicant notes that although a master plan has

previously been approved for the entirety of Industrial Loop, due to the size of the subject lot exceeding 20,000 square feet, a secondary approval from DEP would be required from the agency’s Bureau of Environmental Planning and Analysis unit (“BEPA”). The applicant posits that efforts are underway to obtain the BEPA approval, however it did not know if the requested SCP could be obtained independently of the BEPA approval and requested that a grant be issued on condition that an SCP approval be obtained prior to issuance of a TCO.

Accordingly, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated February 19, 2021, acting on Alteration Type 1 No. 540195796, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the development 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 “Board Approved: November 14, 2022”- Two (2) sheets; and *on further condition*:

THAT a Site Connection Proposal (“SCP”) approval be obtained prior to the issuance of a temporary certificate of occupancy (“TCO”);

THAT the building will be fully sprinklered;

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. 2021-22-A”), shall be obtained within four years, by November 14, 2026;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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

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

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

Adopted by the Board of Standards and Appeals, November 14, 2022.

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2022-19-A

APPLICANT – Rothkrug Rothkrug & Spector, for FS Storer LLC, owner.

SUBJECT – Application April 4, 2022 – Proposed development of a two-story warehouse and office building not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special Richmond District.

PREMISES AFFECTED – 121 Storer Avenue, Block 7311, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated March 28, 2022, acting on Alteration Type 1 Application No. S00694413-I1 reads, in pertinent part:

Respectfully request denial for application S00694413-I1 to facilitate BSA filing. New building application is filed for BSA denial processing only proposed dwelling which does not front on a legally mapped street is contrary to Article III, Section 36 of the General City Law.

This is an application under General City Law (“GCL”) § 36 to permit, in an M1-1 zoning district and the Special South Richmond District, the proposed development of a two-story office and warehouse building, not fronting on a legally mapped street.

A public hearing was held on this application on October 4, 2022, after due notice by publication in *The City Record*, and then to decision on November 14, 2022. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the south side of Storer Avenue, between Muriel Street and Carlin Street, within an M1-1 zoning district and the Special South Richmond District, in Staten Island. With approximately 40 feet of frontage along Storer Avenue, 100 feet of depth, and 4,000 square feet of lot area, the Premises are currently vacant.

II.

GCL § 36 (2) states, in part:

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.

III.

The applicant proposes to develop the Premises with a two-story building with warehouse use (Use Group (“UG”) 16) on the ground floor and office use (UG 6) on the upper floor. The applicant states that the proposed structure would have 3,987.92 square feet of floor area (1.0 FAR) and would be fully sprinklered, satisfying Fire Code requirements (FC 503.3.2) for a building to be located on a public street that has an unobstructed width of less than 34 feet, as Storer Avenue has a paved and improved width varying from 33 to 53 feet. Finally, the applicant states that the proposed building complies and conforms to all requirements of the underlying M1-1 zoning district and all the requirements of the Special South Richmond District.

Furthermore, pursuant to the GCL § 36 requirements, the applicant represents that the subject lot is only accessible from Storer Avenue (and partially improved Lundsten Avenue) and has no frontage on any final mapped street, so the requirement that the Premises be accessible from a street duly placed on the official City map results in practical difficulty and unnecessary hardship in development of the subject lot. The applicant describes that Storer Avenue currently provides access to several developed lots containing comparable uses and is a record street that is currently paved and improved to a varying width and has been for at minimum two decades as evidenced by a Corporation Counsel Opinion (“CCO”) issued January 31, 1991, noting Storer Avenue as a street in use. The applicant further states that development of the lot does not require the proposed structure to be related to any existing mapped streets or highways since Storer Avenue is currently paved and improved, providing access from Carlin Street to the east to several existing buildings adjacent and near to the

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subject site.

IV.

By letter dated November 11, 2022, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application materials and a preliminary review shows compliance with applicable rules and regulations of the Fire Department of the City of New York with respect to fire apparatus access road and location of fire hydrants. In addition to 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 plans for any municipal Fire alarm box requirements. To expediate their review, applicant should provide a survey of all 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, please indicate all utility poles with their identification numbers. It is understood that all legal requirements, including those outlined in the 2022 New York City Fire Code and the New York City Construction Codes must be complied by the applicant. Based upon the foregoing, the Fire Department issues a "Letter of No Objection" to the application. If conditions are found not to be in compliance with the NYC Fire Code, the Fire Department will notify the Board of Standards and Appeals of such non-compliance.

By letter dated August 8, 2022, the New York City Department of Environmental Protection ("DEP") states that based on the DEP maps, there are no sewers in Storer Avenue at the subject location. There is an 8" diameter ("dia.") water main in Storer Avenue between Carlin Street and Muriel Street. No existing water mains or sewers are crossing the privately owned referenced lot. The proposed sanitary and storm will be discharged as per the Site Connection Proposal ("SCP") # 1393/22. It is anticipated that the water connection, connected to the water main in Storer Avenue, will be maintained by the owner and will not be maintained by the City of New York. Based on the above, the NYC DEP has no objections to the proposed GCL § 36 application.

V.

At hearing, the Board raised concerns regarding the proposed plans which failed to dimension several aspects of the subject development including the sidewalks and the curb cut and additionally, the Board discussed other streets, such as Lundsten Avenue, to use for a potential entrance to the proposed building. In response, the applicant submitted a revised proposed site plan that includes an additional dimension showing that the width of the sidewalk between the property line and curb cut is 5'-6" and noted that this width is compliant with pertinent code requirements and sufficient to allow safe pedestrian passage. In response to discussion regarding the entrance for the proposed building the applicant states that that Lundsten Avenue is a record street (not final mapped) that is not open or improved south of the subject site and that no access is currently possible via Lundsten Avenue to the subject site.

Accordingly, 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 March 28, 2022, acting on Alteration Type 1 No. S006944133-I1, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the development 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 "Board Approved: November 14, 2022"- One (1) sheet; and *on further condition*:

THAT a Site Connection Proposal ("SCP") approval be obtained prior to the issuance of a temporary certificate of occupancy ("TCO");

THAT the building will be fully sprinklered;

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. 2022-19-A"), shall be obtained within four years, by November 14, 2026;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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

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

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

Adopted by the Board of Standards and Appeals, November 14, 2022.

2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th 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 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January

MINUTES

23-24, 2023, at 10 A.M., for adjourned hearing.

2020-82-A & 2020-83-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ranchers Best Wholesale Meats, Inc., owner.

SUBJECT – Application October 14, 2020 – Proposed development of a two (1) family dwellings partially located within the bed of a mapped street contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 51 & 53 Cortlandt Street, Block 1039, Lot (s) 39, 37, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for decision, hearing closed.

2021-10-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Victory Boulevard Medical Holdings LLC, owner.

SUBJECT – Application January 19, 2021 – Proposed construction of a one-story commercial building (UG6) not fronting on a mapped street contrary to General City Law §36. M1-1 zoning district.

PREMISES AFFECTED – 3869 Victory Boulevard, Block 2784, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

2021-53-A thru 2021-54-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ciro and Maurizio Asperti, owners.

SUBJECT – Application August 10, 2021 – Proposed development of two semi-detached one-family residential buildings located partially within the bed of a mapped street contrary to General City Law §35. R3-1 zoning district.

PREMISES AFFECTED – 45 & 47 Ocean Avenue, Block 3121, Lot(s) 36 & 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for continued hearing.

2021-57-A

APPLICANT – Eric Palatnik, P.C., for Raphael Holguin, owner.

SUBJECT – Application August 24, 2021 – Proposed construction of a two-story commercial (UG 6) building located partially in the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1900 Hylan Boulevard, Block 3666, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for continued hearing.

2021-72-A

APPLICANT – Sheldon Lobel, P.C., for Chaim S. Metz, owner.

SUBJECT – Application November 15, 2021 – Proposed enlargement of an existing building within the bed of a mapped street contrary to General City Law (§35). R2X zoning district.

PREMISES AFFECTED – 7-11 Annapolis Street, Block 15570, Lot 32, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

2021-84-A

APPLICANT – David L. Businelli, for Pleasant Plains Estates, owner; Diane Rivela, President, lessee.

SUBJECT – Application December 8, 2021 – Proposed construction of a one story and cellar retail building (UG6) with the widening line of Amboy Road contrary to General City Law Section 35 in an C1-1 in R3X SRD.

PREMISES AFFECTED – 6301 Amboy Road, Block 7533, Lot 142, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for postponed hearing.

2022-2-A

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for RXR-LBA Red Hook Owner LLC, owner.

SUBJECT – Application January 11, 2022 – Application to permit the construction within the unbuilt portion of a mapped street contrary to General City Law §35 and ZR §72-01(g). M3-1 zoning district.

PREMISES AFFECTED – 728 Court Street, Block 623, Lot(s) 1, 20, 62 and 93, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to January

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23-24, 2023, at 10 A.M., for continued hearing.

ZONING CALENDAR

2022-11-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Jeremiah Smith, owner.

SUBJECT – Application February 14, 2022 – Proposed development of a detached three-story, two family residential dwelling partially inside of the bed of a mapped street contrary to General City Law §35. R3X (Special Richmond Development District).

PREMISES AFFECTED – 95 Pine Terrace, Block 6245, Lot 6, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for decision, hearing closed.

2022-20-A thru 2022-22-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Richmond Terrace Development LLC, owner.

SUBJECT – Application April 4, 2022 – Proposed development of a one-story warehouse building partially located within the bed of mapped street contrary to General City Law §35. M1-1 zoning district.

PREMISES AFFECTED – 724, 726 & 728 Richmond Terrace, Block 69, Lot(s) 126, 124, 122, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for continued hearing.

2022-25-A

APPLICANT – Law Office of Fredrick A. Becker, for Giorgio Zeolla and Angela De Castro Zeolla, owners.

SUBJECT – Application April 13, 2022 – Proposed enlargement of an existing dwelling partially within the bed of a mapped street contrary to General City Law §35. R4B zoning district.

PREMISES AFFECTED – 88-63 75th Avenue, Block 3875, Lot 119, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for decision, hearing closed.

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 12, 2019, acting on New Building Application No. 123903918, reads in pertinent part:

1. ZR 12-10, ZR 42-10, ZR 42-133, ZR 72-21: A residential use (Zoning Use Group 2) is not allowed as of right in an M1-6 zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval. Approval must be obtained.

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an M1-6 zoning district, the development of a 14-story, plus cellar, mixed commercial and residential use building, contrary to Z.R. § 42-00.

A public hearing was held on this application on October 19, 2021, after due notice by publication in *The City Record*, with continued hearings on April 25, 2022 and September 12, 2022, and then to decision on November 14, 2022. Community Board 5, Manhattan, recommends denial of this application stating, in part:

WHEREAS, An as-of-right building would need to retain the setback and rear yard to be in compliance; and

WHEREAS, Although parts 23-692 & 33-492 of the Zoning Resolution, also known as the Sliver Law, which aims to prevent very tall narrow buildings in certain zoning districts do not apply in manufacturing districts, the Proposed Building is seeking a use change that would make the site an R10 equivalent, where the aforementioned articles would apply and therefore would restrict the height of a residential building; and

WHEREAS, The lot is narrow, but it is not a unique condition, and it would not prevent the development of a commercial or hotel building and the financial analysis evaluates a 8.8 FAR commercial building which does not maximize the available density as well as the possible return on investment, therefore finding (a) is not met;

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and

WHEREAS, The Applicant did not prepare a financial analysis for hotel use, a use that while requiring a special permit is conforming, and the variance would not be the minimum required variance to relieve hardship therefore finding (b) is not met; and

WHEREAS, The Proposed Building is requesting a variance that in effect would allow not only a new zone, but also additional bulk and would not comply with the required sky exposure plan, thus diminishing sunlight due to the removal of a setback, compared to the as-of-right building, and would have a negative impact on the character of the building, therefore finding (c) is not met; and WHEREAS, Granting a use variance would amount to spot zoning, a practice that has been very detrimental to proper land use growth of our district, and CB5 recommends a use change should be pursued through a land use action such as a rezoning to properly evaluate, assess and mitigate such use change.

Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood.

The Board received three form letters of support for this application and one letter of objection, citing concerns over noise and debris from the proposed construction; the height, size, and use of the proposed building; increased traffic and congestion; and cohesion of the proposed design to neighborhood character.

I.

The Premises are located north side of West 28th Street, between 6th Avenue and 7th Avenue, within an M1-6 zoning district, in Manhattan. With approximately 20 feet of frontage along West 28th Street, 99 feet of depth, and 1,975 square feet of lot area, the Premises are currently occupied by a two-story, commercial loft building.

II.

Originally, the applicant proposed to construct a 12-story, 124-foot tall, 19,300 square foot (9.8 FAR), mixed commercial and residential use building at the Premises. The applicant represented that the proposed building would have commercial/retail use at the ground floor with accessory storage in a portion of the cellar and 12 residential condominium units above. The applicant described that the proposed building would have full lot coverage, and the upper floors residential condominium apartments would primarily be two bedroom/two bath units with a study area. The applicant noted that the proposed development would not provide parking. Moreover, the applicant stated that at the second floor, there would be two, one-bedroom units, with the rear unit having a terrace area made possible by the first-floor roof. Furthermore, the applicant stated that the apartment size would be an average unit size of 1,280 square feet for the two-bedroom units and 590 square feet for the one-bedroom units.

In response to community concerns and the Board's comments, the applicant amended its application and now

proposes to construct a 14-story, plus cellar, 19,205 square foot (9.72 FAR) mixed-use building with Use Group ("UG") 6 commercial on the ground floor (1,447 square feet) and UG 2 residential above (17,758 square feet). The applicant states that the proposed building would rise to a base height of 65 feet with a total height of 145 feet; would have a rear yard of 20 feet at the first floor and above; and would not provide parking. The applicant describes that the ground floor commercial/retail space would have 1,447 square feet with a 528 square-foot ground floor lobby and 500 square feet of storage in the cellar. Furthermore, the applicant declares that the upper floors would contain ten residential condominium apartments, which would consist of four two-bedroom units, two one-bedroom units, and four duplex three-bedroom/ two-and-a-half bath units. The applicant further represents that at the second floor, there would be two one-bedroom units with an average size of 585 square feet; at floors 7-14, the average unit size of the three bedroom/ two-and-a-half bath units would be 1,722 square feet, with 400 square-foot terrace to be used by the 7th floor unit.

In the subject M1-6 zoning district, the Zoning Resolution does not permit residential use. *See* Z.R. § 42-00 Accordingly, the applicant seeks the relief requested 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.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its narrow width, undersized lot area, and underdevelopment—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. Specifically, the applicant contends that an as-of-right development at the subject Premises would be burdened by limited usable space, limited number of potential employees per floor, limited space and windows on setback floors, and restricted layout flexibility. In support of this contention, the applicant submitted as-of-right plans which illustrate a commercial office development scenario provides for a 14-story commercial office building and accessory storage and mechanicals at the cellar level. These plans further demonstrate that the reception area would be limited to be in front of the elevator as a five-foot turning radius is required for elevator waiting area; the ADA clearance required to maintain a continuous accessible aisle from front to back, would limit the size of furniture, cubicles, and the ability to create partitions for private offices; and providing a conference room or private office with accessible clearance for seating would take up a large percentage of the usable space.

Regarding the underdevelopment at the site, the applicant notes that the Premises are currently improved with a 1,400 square feet (1.78 FAR) building built on or

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about 1920 on clay soil, with a foundation constructed from brick walls on continuous concrete footing. The applicant describes the existing building with the first-floor construction concrete floor set on sleepers, and the second floor and roof are constructed with wood beams. The applicant contends that the existing shallow foundations (continuous concrete spread footings) of the subject building structure are on clay soil, and typically clay soil has very poor settlement characteristic, especially when the level of bearing pressure is near its allowable value, which would limit the amount of the reserved capacity which can be used for future additions when settlement issue is taken into consideration. Additionally, the applicant states that because the existing building built to approximately 17% (1.78 FAR when 10.0 FAR is permitted) of its allowable bulk, prevents its practical usage for any conforming use while still enabling it to earn a reasonable return.

In support of this contention, the applicant submitted a Uniqueness Study demonstrating that, within 1,000 feet of the site (the "Study Area"), there are 288 sites, of which, 265 (92%) are wider than 21 feet; of the remaining 23 narrow sites, 3 (13%) contain more than 2,000 square feet of lot area; and of the 20 small and narrow properties, 8 (40%) already contain residential uses. The Uniqueness Study found 12 sites in the study area that warrant further consideration, which unlike the subject lot, are grouped together under common ownership with adjacent properties so as to be suitable for zoning lot mergers to create lots for larger development sites or the lots are already improved with larger nonconforming buildings. As a result, the Study concludes that the subject site is one of six (the subject site, 110 West 28th Street, 137 West 28th Street, 1145 Broadway, 1147 Broadway, and 1149 Broadway) in a study area of 288 properties (2%) that are comparably affected by a strict application of the M1-6 zoning district.

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.

B.

Next, the applicant submits that in the absence of the grant of the variance requested in this application, it would not be possible for the subject Premises to provide a reasonable return on investment. In support of this contention, the applicant submitted a Financial Feasibility Study, which finds that the estimated project value for a conforming commercial use is \$14.2 million, which capitalizes the net operating income of the office use and is insufficient to offset development costs of \$17.2 million. The Financial Feasibility Study describes that the total proposed project value represented by the condominium sales, plus the capitalized value of the net operating income of the ground floor retail use approximates \$25.3 million, sufficient to offset the total development costs of approximately \$20.5 million. Furthermore, the Study finds that the proposed development scenario provides for a return on project cost on a condominium basis of 6.8%

annually over the construction and sell-out time periods. Additionally, the Study states that the projected return is measured against the tax implications of a buy and sell transaction and the risks associated with real estate development as measured against alternative investments.

Accordingly, the Board finds that because of the unique physical condition at the subject Premises, there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of the Zoning Resolution would bring a reasonable return.

C.

The applicant further 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 points out that both residential uses and buildings of comparable heights are prevalent in the area immediately surrounding the Premises. To support this finding, the applicant submitted aerial photographs and social block character map of the uses with number of stories for buildings around the subject site, which demonstrate that there are buildings on both sides of the Premises that rise to a comparable height as the proposed building. The adjacent lot (Block 803, Lot 49) to the southeast is a hotel with 17 stories that rises to a height of approximately 185 feet. Block 803, Lot 67 is a commercial office building rising to a height of approximately 23 feet. Additionally, the social block is improved with multiple residential buildings including Block 803, Lot 65 and Block 803, Lot 57, which are seven-story buildings rising to the height of 79 feet. Therefore, the applicant concludes that as the Premises is surrounded by high-rise commercial and residential buildings that would allow the proposed development to blend into the use of the neighborhood as well as the streetscape of the neighborhood.

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 represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the strict application of the Zoning Resolution to the subject zoning lot. The applicant contends that the subject lot's small size was not created through a zoning lot subdivision, as it has comprised an entire zoning lot and has not been part of a larger zoning lot since at least prior to the enactment of the 1961 Zoning Resolution. In support of this contention, the applicant submitted the deeds for the subject lot and adjacent lots which demonstrate that the lot of record has been in single ownership existing on December 15, 1961, as demonstrated by the same lot description in the deeds conveying the lot immediately prior to and

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immediately after December 15, 1961. 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 notes that the variance request is the minimum necessary to develop a community facility at the Premises. The applicant submits that the proposed building would enable the owner to obtain a return on equity of approximately 6.8% as shown in the financial analysis, which it finds is not excessive and is the minimum required to grant the owner relief. 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.

Over the course of hearings and in response to community concerns, the Board raised concerns regarding the submitted Financial Feasibility Study and requested that the applicant revise it to summarize the site value analysis and the market research to determine the impact of the Hotel Text Amendment for M1 Zoning Districts approved in December 2018 on sales transactions post December 2018. Additionally, the Board questioned the applicant's proposed plans which did not include DEP comments or a usable lobby layout.

In response, the applicant submitted a revised Financial Feasibility Study which evaluated if the pricing for comparable development sites declined subsequent to the hotel text amendment requiring special permit approval at City Planning. The Study noted that the available sales transactions were for sites improved with commercial buildings, not comparable to the subject site. The Study found that of the total of 23 sales transactions, 9 (39%) properties were identified as under-built sites, and the remaining 14 (61%) sales transactions are associated with larger sites and/or lot configurations more suitable for commercial office or hotel development. Therefore, the applicant concluded that due to the lack of comparable market data as a result of the effects of the COVID-19 Pandemic, it could not determine the impact of the hotel text amendment on land prices at this time.

In response to the comments regarding the proposed plans, the applicant submitted revised plans with DEP notes regarding air quality and hazmat at the subject site and amended the lobby layout to include two separated lobbies and two separated exits for each occupancy group, which is required for a mixed-use building. Moreover, in accordance with the BSA-approved plans, the Board notes that the second floor rooftop terrace would be used only by the abutting unit, and the 14th floor rooftop would be open to residents but would not be open to the public.

V.

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. 19BSA152M, dated November 14,

2022. 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 January 14, 2021, the Landmarks Preservation Commission ("LPC") states that the subject Premises have there are no architectural or archaeological significance.

By letter dated April 16, 2021, the New York City Department of Environmental Protection ("DEP"), Bureau of Environmental Planning and Analysis states that it has reviewed the Air Quality and Noise chapters of the chapters of the December 8, 2020 Environmental Assessment Statement ("EAS") and supporting materials and has the following comments:

Air Quality

Based on the air quality analysis performed, as it pertains to mobile source, the Proposed Action would not result in any significant mobile source impact. The proposed project would not generate greater than 140 vehicular trips per-hour per intersection, nor would it generate peak hour heavy-duty diesel vehicle traffic or its equivalent. As such, the proposed action does not have the potential for adverse impacts related to mobile source air emissions from project-generated traffic. Additionally, the Proposed Action would add no parking spaces and would not be located adjacent to existing large parking facilities or parking exhaust vents. Therefore, no significant mobile source air quality impacts from parking facilities are expected.

Based on the stationary source assessment, a new stationary source of emissions would not be introduced as a result of the Proposed Action. The Proposed Development would consist of one building equipped with an electrically powered Variable Refrigerant Flow ("VRF") HVAC system. Electrically powered VRF systems are low to zero-emissions systems. Therefore, there are no significant adverse air quality impacts expected.

Based on the industrial source assessment performed and field investigation one active industrial emissions permit was identified within the 400-foot study area with adequate emissions controls in place. No large sources of industrial emissions were identified within the 1,000-foot study area. Therefore, there is no potential for significant impact in terms of air toxics to the proposed building occupants.

Noise

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Based on the noise analysis performed, as it pertains to mobile sources, vehicular traffic is the predominant source of noise in this area. Project-generated traffic would not double vehicular traffic on nearby roadways, and therefore would not result in a perceptible increase in vehicular noise.

Based on the stationary source assessment, the Proposed Action would introduce two rooftop decks for tenant use (BBQs, small gatherings, etc.) and a terrace on the second floor. The terrace and rooftop decks would not be utilized for active recreation and would not result in a new stationary noise source or other loud uses that would result in adverse impacts to surrounding receptors.

In addition, the highest recorded L_{10} at the subject property was 72.5 dB(A) during the evening monitoring period. Based on these results the building would require a minimum composite window-wall attenuation of 28 dB(A) to achieve an acceptable interior noise level of 45 dB(A). To maintain an interior noise level of 45 dB(A) with a closed window condition, an alternate means of ventilation will be provided. With the proposed window/wall attenuation in place, the proposed project would not have a significant noise impact. Lastly, no unenclosed specific stationary noise sources of concern were observed during field reconnaissance. As the project site is not subject to high ambient noise levels from any nearby stationary source, no stationary source noise impacts from surrounding uses are anticipated. The proposed building HVAC equipment would comply with the NYC Noise Code² and would not result in a new stationary source of noise.

By letter dated June 23, 2022, the NYC DEP, Bureau of Sustainability states that it has reviewed the June 2022 Remedial Action Work Plan (“RAP”) and May 2022 Construction Health and Safety Plan (“CHASP”) for the proposed project. The June 2022 RAP proposes the excavation, transportation and off-site disposal of soil in accordance with applicable local, state, and federal laws and regulations; any underground storage tanks or aboveground storage tanks found during the site excavation will be properly managed and closed/removed in accordance with applicable local, state, and federal laws and regulations; stockpiled soil will be covered with plastic sheeting; dust control; air monitoring; if necessary, appropriate provisions will be made and permits obtained for the discharge of groundwater to the New York City sewer system; any areas of the site to be landscaped or covered with grass (not capped with an impervious surface) must have a minimum of two-feet of DEP approved clean fill/topsoil imported from an approved facility/source and graded across the landscaped/grass areas; and design and installation of vapor barrier under the proposed building slab and on the sidewalls of the foundation consisting of 20-mil W.R. Grace

Florprufe 120 or an approved equivalent (specifications of the proposed barrier shall be forwarded to DEP for review and approval prior to construction). The May 2022 CHASP addresses worker and community health and safety during construction.

Based upon the review of the submitted documentation, DEP have the following comments and recommendations to BSA:

CHASP

- BSA should instruct the applicant that information fact sheets or safety data sheets for volatile organic compounds (VOCs) should also be included.

DEP finds the June 2022 RAP and May 2022 CHASP for the proposed project acceptable, as long as the aforementioned information is incorporated into the 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 applicable local, state, and federal laws and regulations; two feet 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, etc.).

The applicant submitted a RAP with revised CHASP dated June 29, 2022 addressing DEP’s June 23, 2022 letter.

By Technical Memorandum 001 dated September 7, 2022, the applicant represents that modifications to the proposed development from 12 to 14 stories would not result in any significant adverse impacts beyond those disclosed in the EAS for the previously proposed 12-story development. 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.

VI.

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*, the construction of a 14-story, plus cellar, mixed use commercial and residential building, contrary to Z.R. § 42-00; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: November 14, 2022” — Nine (9) sheets; and *on further condition*:

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THAT a Professional Engineer (“P.E”) will certify a closure report at the completion of all remedial activities associated with the site, including installation of a vapor barrier under the proposed building slab and on the sidewalls of the foundation consisting of 20-mil W.R. Grace Florprufe 120 or an equivalent to be approved by DEP prior to construction;

THAT a closure report will be submitted to DEP for review and approval;

THAT the exterior walls and windows of the proposed building’s entrance that is the southern façade will require a minimum composite window-wall attenuation of 28 dB(A);

THAT to achieve and maintain an acceptable interior noise level of 45 dB(A) with a closed window condition and alternate means of ventilation shall be provided;

THAT the 2nd floor terrace and 14th floor rooftop deck shall not be utilized for active recreational purposes;

THAT the building shall be equipped with an electrically powered variable refrigerant flow HVAC system;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-179-BZ”), shall be obtained within four years, by November 14, 2026;

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 14, 2022.

2020-10-BZ

APPLICANT – Law Office of Lyra J. Altman, for Penina Feltman and Scott M. Feltman, owners.

SUBJECT – Application January 16, 2020 – 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.

PREMISES AFFECTED – 609 Jarvis Avenue, Block 15595, Lot 25, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 18, 2019, acting on Alteration Type I

Application No. 421630578, reads in pertinent part: “Proposed plans are contrary to Zoning Resolution Section 23-142 in that the proposed floor area ratio exceeds the maximum permitted.”

This is an application under Z.R. §§ 73-621 and 73-03 to permit, within an R4-1 zoning district, the enlargement of an existing single-family, two-story, semi-detached residence, contrary to Z.R. § 23-142.

A public hearing was held on this application on September 12, 2022, after due notice by publication in *The City Record*, and then to decision on November 14, 2022. The Board received one form letter of support for this application.

The Premises are located on the southeast side of Jarvis Avenue, between Beach 6th Street and Beach 7th Street, within an R4-1 zoning district, in Queens. With approximately 23 feet of frontage along Jarvis Avenue, 101 feet of depth, and 2,241 square feet of lot area, the Premises are occupied by an existing single-family, two-story, 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 residential building that existed on December 15, 1961, as contemplated in Z.R. § 73-621.

The existing residence is a single-family, two-story, semi-detached building with a floor area of 1,790.32 (0.80 FAR). The applicant proposes to increase the total floor area of the residence to 2,161.29 square feet (0.964 FAR) by adding an additional floor area of 56.56 square feet of base floor area and 314.41 square feet of floor area under a sloping roof, representing an increase of seven percent above the permitted total FAR. The applicant states that the additional floor area would be created by infilling the open space on the second floor of the two-story high portion of the first-floor dining room to facilitate an additional bedroom. At the Premises, the maximum FAR permitted is .90 (2,017.42 square feet), comprised of a base FAR of .75 (1,681.18 square feet) and .15 FAR (336.24 square feet) under a sloping roof, allowing for an increase of 10 percent from the permitted FAR to a total floor area ratio of .99, see Z.R. § 23-142.

The applicant represents that the proposed residence would provide one side yard of measuring 4’-4”; a front yard with a depth of 19’-11” at the first floor and 17’-5” at the second floor and above; and a yard with a depth of 31’-6” at the first floor and 33’-6” at the second floor and above. The applicant represents that the enlargement is consistent with the built character of the neighborhood because the eight residences constructed at 720-818 Jarvis Court, contain 3,203 square feet, and the 14 attached residences located south of Seagirt Avenue, between Beach 5th Street and Beach 6th Street, contain 3,942 square feet. Furthermore, the applicant represents that of the 16 residences on Jarvis Avenue, between Beach 5th Street and Beach 6th Street, 14

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(88%) are 3,885 square feet.

At hearing, the Board requested that the applicant submit plans that detail the proposed changes to the attic. Additionally, as the Premises are located in New York City's Coastal Zone, the Board requested that the applicant assess its consistency with the New York City Waterfront Revitalization Program ("WRP") to assure that the proposed enlargement does not hinder any of the policies of the program.

In response, the applicant provided a revised plan with an updated cellar diagram depicting the new fill between the existing and new cellar level, which is to match the exterior grade level and added a note that the crawl space shall not be used for habitable space. Additionally, the proposed plans indicate, and the Board notes, that it is not waiving any applicable flood regulations, which are subject to DOB review.

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 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 enlargement of an existing single-family, two-story, semi-detached residence that does not comply with zoning regulations for floor area ratio, contrary to Z.R. § 23-142; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Board Approved: November 14, 2022" — Sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 2,161.29 square feet of floor area (0.964 FAR);

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 condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2020-10-BZ"), shall be obtained within four years, by November 14, 2026;

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 14, 2022.

2021-30-BZ

APPLICANT – Sheldon Lobel, P.C., for Mesorah Publications, LTD, owner; Brooklyn Rise Charter School, lessee.

SUBJECT – Application May 5, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Brooklyn Rise Charter School) contrary to ZR §42-10 (use), ZR §43-26 (rear yard), ZR §43-43 (street wall height, setback and sky exposure plane). M1-2 Zoning District.

PREMISES AFFECTED – 222 44th Street, Block 736, Lot(s) 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application dismissed for failure to prosecute.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated April 23, 2021, acting on Alteration Type 1 Application No. 322035935, reads, in pertinent part:

(42-10) Use Group 3, school use, not permitted in M1-2 zoning district contrary to ZR 42-10. BSA Approval Required.

(43-40) Height and setback regulations

(43-43) Initial setback distances

Required: narrow street: 20 feet, proposed: 0 feet (variance required)

Maximum height of front wall: 60 feet or 4 stories, whichever is less. Proposed height of front wall: 80'-0", 5 stories (variance required)

Yard regulations

(43-26) Rear yard: minimum required: 20 feet

Existing rear yard: 10 feet Proposed rear yard for 5th floor addition: 10 feet (variance required)

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an M1-6 zoning district, the development of a Use Group ("UG") 3 school, contrary to Z.R. §§ 42-10 (use), 43-26, and 43-43.

A public hearing was held on this application on October 4, 2021, after due notice by publication in *The City Record*, with the applicant requesting adjournments for

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hearing scheduled on December 13, 2021, March 28, 2022, and August 8, 2022, and then to decision on November 15, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Yoon performed inspections of the site and surrounding neighborhood. Community Board 7, Brooklyn, recommends denial of this application stating, in part:

While CB 7 previously supported Brooklyn Rise at its current location and is very sympathetic to their need for a new and larger space, the majority of our members were greatly concerned about the location, noting that it would force young children to cross 3rd Avenue, the most dangerous pedestrian street in our community and major truck route, and were also concerned about the integrity of the Industrial Business Zone in which the school was proposed.

The Board received two form letters of support for the application, one letter of support, and a petition of support with 213 signatures. Additionally, the Board received three form letters of objection and three letters of objection stating concerns about the school's potential to intensify traffic; overload the community's infrastructure and parking capacity; increase noise and trash; reduce the amount of light reaching adjacent properties and the public way; negatively affect the character of the neighborhood; and pose safety concerns for the prospective students.

The Premises are located on the south side of 44th Street, between 2nd Avenue and 3rd Avenue, in an M1-2 zoning district, in Brooklyn. With approximately 140 feet of frontage along 44th Street, 100 feet of depth, and 14,073 square feet of lot area, the Premises are occupied by a four-story manufacturing building with approximately 40,170 square feet of floor area and a portion of a two-story manufacturing building with approximately 4,702 square feet of floor area.

The applicant proposes to enlarge and renovate the existing four-story manufacturing building for use as the proposed UG 3 school. The applicant represents that the existing building would be enlarged with one additional story, resulting in a five-story, plus cellar, UG 3 school with approximately 47,393 square feet of floor area. Specifically, the applicant states that the cellar would consist of administrative space, mechanical space, and storage space; the ground floor would consist of a main lobby, administrative space, nurse's office, warming kitchen, delivery area, refrigerated refuse area, two kindergarten classrooms which would be connected to a rear yard play area, kindergarten office, two first grade classrooms, and bathrooms. The applicant further describes that the second floor would consist of a cafeteria, art classroom, storage space, two second grade classrooms, two third grade classrooms, one special education classroom, projects classroom, administrative space, and bathrooms. The applicant claims that the third floor would include one music and dance classroom, storage space, two fourth grade classrooms, two fifth grade classrooms, faculty lounge, administrative space, and bathrooms. The applicant further

proposes that the fourth floor would consist of a library, science classroom, preparatory room, storage space, one sixth grade classroom, two seventh grade classrooms, two eighth grade classrooms, one special education classroom, one projects classroom, administrative space, and bathrooms. Finally, the applicant explained that the fifth floor would include a full, double-height, regulation-size gymnasium, gymnasium storage room, gymnasium office, bathrooms, and an outdoor rooftop recess area; and the roof would be covered with solar panels.

At hearing, the Board instructed the applicant to clarify which zoning lot constituted the subject zoning lot and to state the dimensions of the entire zoning lot on the applicant's zoning analysis chart. Furthermore, the Board questioned whether the school would be able to meet the conditions as stated under Z.R. § 72-21(c) and comport with the character of the neighborhood, which is located within the Southwest Brooklyn Industrial Business Zone ("IBZ"). Specifically, the Board raised concerns about the danger that could be posed to students by the high volume of truck traffic and delivery activity in the streets surrounding the school. The Board also questioned the degree to which the school would impact traffic patterns and negatively affect commercial and manufacturing operations in the IBZ and asked the applicant to clarify how the proposed development met the Z.R. § 72-21(c) criteria. Moreover, the Board raised concerns about whether the school's proposed bulk constituted the minimum variance necessary to satisfy Z.R. § 72-21(e). In particular, the Board questioned whether the school's programmatic need, as articulated in its Z.R. § 72-21 (a) argument, necessitated the degree of floor area dedicated to some of the school's interior spaces, including seven classrooms with more than 800 square feet of floor area. The Board instructed the applicant to, in its next submission, further detail the programmatic need for the school's interior spaces; label the dimensions and proposed uses of all interior spaces and internal structures; provide section drawings; and indicate the degree to which the rooftop solar panels would increase the school's height.

However, the applicant requested adjournments of the public hearings scheduled for December 13, 2021, March 28, 2022, and August 8, 2022. At the public hearing on August 8, 2022, the Board stated that no further adjournments on this application would be permitted and sent a dismissal warning letter on August 10, 2022, instructing the applicant that failure to make a complete submission by October 25, 2022, and appear at the public hearing on November 14, 2022, may result in the denial of this application or dismissal for failure to prosecute. The Board notes that the applicant may return at a future date when they are ready to prosecute this application. No further submission, nor appearance, was made in this application.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *dismiss* this application for failure to prosecute.

Adopted by the Board of Standards and Appeals, November 15, 2022.

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2020-36-BZ

CEQR #20-BSA-083K

APPLICANT – Eric Palatnik, P.C. for Bolla City Holdings, LLC., owner.

SUBJECT – Application April 27, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 8401 Flatlands Avenue, Block 8005, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 22, 2020, acting on Alteration Type 1 Application No. 322041857, reads:

Proposed continuance of an automotive service station use with accessory uses in C2-3 in R5D zoning district contrary to ZR Section 32-35 and BSA Cal. No. 87-02-BZ and therefore requires a Special Permit by BSA pursuant to ZR section 73-211.

This is an application under Z.R. §§ 73-211 and 73-03 to permit, in a C2-3 (R5) zoning district, the continued operation of a previously approved automotive service station with a variance, granted under BSA Cal. No. 87-02-BZ and expired on January 14, 2013.

A public hearing was held on this application on February 8, 2022, after due notice by publication in *The City Record*, with a continued hearing on September 13, 2022, and then to decision on November 14, 2022. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 18, Brooklyn, recommends approval of this application. The Board received one letter of support and two letters of objection, citing concerns over noise, adherence to neighborhood character, and environmental harm caused by the use at the site.

The Premises are located on the northeast corner of Flatlands Avenue and East 84th Street, within a C2-3 (R5) zoning district, in Brooklyn. With approximately 170 feet of frontage along Flatlands Avenue, 95 feet of frontage along 84th Street, and 15,551 square feet of lot area the Premises are occupied by a one-story automotive repair shop with an accessory convenience store.

The Board has exercised jurisdiction over the Premises since June 23, 1931, when, under BSA Cal. No. 92-31-BZ, the Board granted a use variance for a term of two years, to expire on June 23, 1931, on condition that any gasoline pumps be set back ten feet from the building line; the entrances to the gasoline station be confined to the Flatlands

Avenue portion of the Premise, which consist of two entrances, the curb cuts of which be not more than 14 feet each in width; any accessory use be confined along the northerly lot line of the Premises; these conditions be maintained only so long as the Premises are operating under the temporary permit, and in the event that a permanent permit be granted at some future time, the usual conditions and restrictions which are imposed on gasoline stations be imposed by the Board; all permits be obtained within six months, by December 23, 1932, and any work involved be completed within nine months, by March 23, 1932.

On May 28, 1935, under BSA Cal. No. 92-31-BZ, the Board amended the resolution to extend the term of the variance for two years, to expire on May 28, 1937, on condition that any gasoline pumps be set back ten feet from the building line; the entrances to the gasoline station be confined to the Flatlands Avenue portion of the Premises, which consists of two entrances; the curb cuts be not more than 14 feet each in width; any accessory use be confined along the northerly lot line of Premises; these conditions be maintained only so long as the Premises are operating under the temporary permit, and in the event that a permanent permit be granted at some future time, the usual conditions and restrictions which are imposed on gasoline station be imposed by the Board; and other than as amended, the resolution be complied with in all respects.

On May 18, 1937, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of the term of the variance for two years, to expire on May 18, 1939, on condition that any gasoline pumps be set back ten feet from the building line; the entrances to the gasoline station be confined to the Flatlands Avenue portion of the Premises, which consists of two entrances; the curb cuts be not more than 14 feet each in width; any accessory use be confined along the northerly lot line of Premises; these conditions be maintained only so long as the Premises are operating under the temporary permit, and in the event that a permanent permit be granted at some future time, the usual conditions and restrictions which are imposed on gasoline station be imposed by the Board; and other than as amended, the resolution be complied with in all respects.

On May 2, 1939, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of the term of the variance for two years, to expire on May 2, 1941, on condition that any gasoline pumps be set back ten feet from the building line; the entrances to the gasoline station be confined to the Flatlands Avenue portion of the Premises, which consists of two entrances; the curb cuts be not more than 14 feet each in width; any accessory use be confined along the northerly lot line of Premises; these conditions be maintained only so long as the Premises are operating under the temporary permit, and in the event that a permanent permit be granted at some future time, the usual conditions and restrictions which are imposed on gasoline station be imposed by the Board; and other than as amended, the resolution be complied with in all respects.

On April 15, 1941, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension

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of the term of the variance for ten years, to April 15, 1951, on condition that the existing plot be leveled substantially to the grade of Flatlands Avenue; all existing buildings be removed or reconstructed as proposed; the accessory building be arranged substantially as indicated on the BSA-approved plans and be constructed of incombustible materials, except that the roof beams, roof boarding, window frames and sash, door frames and doors be of wood, provided the ceiling is fire-retarded throughout, in accordance with the rules of the Board of Standards and Appeals; there be no window opening on the lot line adjoining the property to the east; these Premises be used in conjunction with the adjoining property to the north in the unrestricted district under same ownership and now improved with a one-story garage; the entire Premises where not covered by accessory buildings and planting, as proposed, be cement paved; there be erected on the interior lot line to the east, a masonry wall constructed of face brick, not less than six feet in height and properly coped; said wall may be reduced to a height of four feet to a distance of ten feet back from Flatlands Avenue; such wall be continuous to the wall of the existing garage; there be substantial curbing around plots indicated for planting, along the building line of Flatlands Avenue and East 84th Street; such curbing be not less than six inches in height and not less than six inches in width; no pumps be located nearer than 15 feet to the street building line of Flatlands Avenue; such pumps be not over three twin installations and not nearer than 20 feet to the building line of East 84th Street; the curb cuts not exceed two to Flatland Avenue, each not over 30 feet in width and no curb cuts be nearer than the interior lot line or the street line of East 84th Street than five feet; the existing curb cut be continued to the garage from East 84th Street; the existing gasoline pump in the unrestricted district be removed; the signs be restricted to permanent signs attached to the façade of accessory building, excluding all roof signs other than those on the illuminated globes of the pumps, but permitting the erection within the building line of a post standard for supporting a sign, which may be illuminated, advertising the brand of gasoline for sale, permitting such sign to extend beyond the building line a distance of not over four feet; any lighting for general illumination be by means of steel pipe standards with metallic reflectors so arranged as to reflect toward the center of the Premises and away from the adjoining occupancies; the Premises be used for no other use than as permitted; there be no parking or storage of cars other than those being serviced; no other portable gasoline tanks be used on or from the Premises; there be no repairing of automobiles of cars except in the unrestricted portion to the rear; a proper retaining wall be constructed along the line of East 84th Street on the street building line for the full depth of the plot and protected with an iron pipe railing or masonry wall not less than three feet above grade; all permits required be obtained and all work involved completed within one year, by April 15, 1942.

On March 10, 1942, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits and complete

construction, on condition that all required permits be obtained, and all work involved be completed within one year, by March 10, 1943. On March 2, 1943, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits and complete construction, on condition that all required permits be obtained, and all work involved be completed within one year, by March 2, 1944. On February 15, 1944, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits and complete construction, on condition that all required permits be obtained, and all work involved be completed within one year, by February 15, 1945. On February 14, 1945, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits, and complete construction, on condition that all required permits be obtained, and all work involved be completed within one year, by February 14, 1946; and other than as amended, the conditions of the resolution be complied with.

On February 13, 1946, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits and complete construction, on condition that all required permits be obtained, and all work be completed within one year, by February 13, 1947. On February 11, 1947, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits and complete construction, on condition that in view of the applicant's representative that plans have been approved and work is proposed to be started presently, all permits required be obtained, and all work completed within one year, by February 11, 1948.

On April 22, 1947, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit the accessory building to be constructed for a depth of 30 feet instead of 25 feet in depth, as indicated on plans filed with the application, on condition that as other than as amended, the conditions of the resolution be obtained and all work completed within one year, by April 22, 1948. On February 3, 1948, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of time to obtain permits and complete construction, on condition that in view of statement by applicant that 90% of the work is completed, all permits be obtained, and all work completed within one year, by February 3, 1948. On December 9, 1952, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit the addition of a curb cut on the Premises from East 84th Street for a width of 27 feet as proposed and indicated on the BSA-approved plans, on condition that the resolution be complied with in all other respects.

On May 25, 1954, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit that there be two additional 550-gallon gasoline storage tanks, making a total of eight such tanks as shown on the BSA-approved plans. On February 15, 1956, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an

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extension of term of the variance for ten years, to expire on February 15, 1966, on condition that other than as amended, the resolution be complied with in all respects; all permits, including a new certificate of occupancy be obtained within six months, by November 25, 1955. On May 3, 1966, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit an extension of term of the variance for ten years, to expire on May 3, 1966, on condition that other than as amended, the resolution be complied with all respects; and a new certificate of occupancy be obtained.

On July 16, 1968, under BSA Cal. No. 92-31-BZ, the Board further amended the resolution to permit, within a R5 zoning district, the reduction in lot area of an automotive service station with accessory uses and the addition to include the parking of cars awaiting service, pursuant to Z.R. § 11-412, on condition that all work substantially conform to drawings as filed with the application; all billboard signs be removed from the Premises; the resolution be complied with all respects; all laws, rules, and regulations applicable be complied with; all work be substantially completed within one year, by July 16, 1969.

On January 14, 2003, under BSA Cal. No. 87-02-BZ, the Board further amended the resolution to grant a variance, pursuant to Z.R. § 72-21, in an R5 zoning district, to replace the existing structure with a new 4,741 square foot automotive service station with an accessory retail convenience store, installation of underground storage tanks, construction of a new overhead canopy with five pump islands and the installation of new signage contrary to Z.R. § 32-00 and BSA Cal. No. 483-69-BZ, on condition that all work substantially conform to objections and drawings as filed with the application; the term of the variance be limited to ten years, to expire on January 14, 2013; the Premises be maintained free of debris and graffiti; any graffiti located on the premises shall be removed within 48 hours; the above conditions and all conditions from prior resolutions appear on the certificate of occupancy; 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) 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) and/or configuration(s) not related to the relief granted.

The applicant seeks a new Z.R. § 73-211 special permit to extend the term for the use of an automotive service station with an accessory convenience store and automotive repair. The applicant describes that the following services are provided at the Premises:

- Gas filling services (self-serve operation), one employee per shift, 24 hours/ 7 days a week;
- Convenience store, one to two employees per shift, 24 hours/ 7 days a week;
- Food services, three employees per shift, 24 hours/ 7 days a week;
- Automobile repairs, four employees per shift,

8:00 a.m. to 6:00 p.m. Monday through Friday, 8:00 a.m. to 5:00 p.m. Saturday, and 8:00 a.m. to 4:00 p.m. Sunday.

Furthermore, the applicant submitted plans illustrating that the 4,455 square-foot building is separated by a party wall into two separate areas, one 1,926 square-foot area for automotive repair and one 2,528 square foot area with an accessory convenience store. Additionally, the plans illustrate that the automotive repair has four service bays, a storage room, two restrooms, a utility room and an attendant/ waiting area, and the convenience store has 1,237.80 square feet of sales area with a restroom, food prep area, walk-in cooler, attendant area, and a utility/ storage room. Moreover, the plans depict that the automotive station has five existing concrete pump islands with existing MPDs covered by a canopy and two 12,000-gallon underground storage tanks as well as nine parking spaces with one ADA accessible space. With respect to ingress to and egress from the site, the applicant represents that the entrances and exits currently at the site are designed to ensure that vehicular movement to and from the site can circulate with a minimum of obstruction to the streets and sidewalks, with the existing curb cut configuration provides three 30-foot curb cuts along Flatlands Avenue and one 30-foot curb cut along East 84th Street.

DOB Technical Policy and Procedure Notice (“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 2,500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less. The applicant submits that the proposed accessory convenience store is 1,237.80 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,887.80 square feet).

Over the course of hearings, the Board raised concerns regarding the environmental implications of the proposed use; the continued approved use at the Premises since the expiration of the prior grant; and trash, debris, and lighting spillage onto adjacent properties.

In response, the applicant submitted a revised Environmental Assessment Statement (“EAS”) with revised plans attesting that there are no plans for new-in ground disturbances at the site. Additionally, the revised plans included a note regarding shielding the light that may spill onto adjacent residential uses. Moreover, the applicant stated that the site has been in continuous use with no significant alterations since 2013, and in support of this contention submitted various Google photographs of the site showing that the automotive service station has been in continuous use since the expiration of the grant.

Additionally, the applicant submitted an operational plan regarding trash collection, committing to the following: Trash collection is performed three times per

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week, typically in the early morning hours. Efforts are taken to minimize potential food/perishable waste which is put into sealed plastic trash bags before disposal. If it is observed that this waste is accumulating beyond typical minimal amounts, the garbage collection company would be contacted for an additional pick up beyond the normal schedule.

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. 20BSA083K, dated November 14, 2022. 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.

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 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 make each and every one of the required findings under Z.R. §§ 73-211 and 73-03 to *permit* the operation of an automotive service station (UG 16) with an accessory convenience store, contrary to Z.R. § 32-00, *on condition* that all work, site conditions, and operations shall conform to drawings filed with this application marked “Board Approved: November 14, 2022 — Twelve (12) sheets” and *on further 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 all lighting sources that are to be located adjacent to residential use shall be shielded from direct view to minimize any adverse effects on surrounding residences;

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. 2020-36-BZ”), shall be obtained within four years by November 14, 2026;

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 14, 2022.

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – 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.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 13, 2020, acting on New Building Application No. 321598035, reads in pertinent part: “ZR 44-21: The number of spaces does not comply with ZR 44-21. Seek BSA approval, pursuant to 73-44.”

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”) 4 ambulatory diagnostic or treatment facility and UG 6 commercial use in Parking Requirement Category (“PRC”) B1 on a zoning lot primarily located within an M1-1 zoning district and partially located within an R5 zoning district, contrary to Z.R. § 44-21.

A public hearing was held on this application on December 14, 2021, after due notice by publication in *The City Record*, with continued hearings on March 15, 2022, May 24, 2022, and October 4, 2022, and then to decision on November 14, 2022. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and the surrounding neighborhood. Community Board 12, Brooklyn, recommends approval of this application. The Board also received one form letter of support for this application, and three form letters of objection stating concerns about the proposed development’s potential effects upon parking availability, traffic congestion, and pedestrian safety.

I.

The Premises are a through lot bounded by Parkville

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Avenue to the south, McDonald Avenue to the east, and Lawrence Avenue to the north, primarily within an M1-1 zoning district and partially within an R5 zoning district, in Brooklyn. With approximately 80 feet of frontage on Parkville Avenue, 220 feet of frontage on McDonald Avenue, 80 feet of frontage on Lawrence Avenue, and 18,413 square feet of lot area, the Premises are occupied by a one-story commercial building and parking area on Lot 22 and sidewalk on Lot 33.

The applicant proposes to maintain Lot 33 for use as a sidewalk and, on Lot 22, to demolish the existing building and construct a five-story, mixed community facility and commercial use building with a sub-cellar and cellar. The applicant states that the proposed building would have approximately 42,972 square feet of floor area, of which 24,894 square feet of floor area would be dedicated to a proposed UG 4 ambulatory diagnostic or treatment facility and 18,078 square feet of floor area would be dedicated to UG 6 commercial use in PRC B1. Specifically, the applicant states that the sub-cellar would include a cafeteria, chapel, accessory workout room, two meeting rooms, and storage; the cellar would contain UG 6 commercial uses; the first story would comprise of a fully-attended parking facility, UG 6 commercial use, and two lobby levels; the second story would contain UG 6 commercial uses; and the third, fourth, and fifth stories would encompass a UG 4 ambulatory diagnostic / treatment facility with 22 exam rooms, 10 private doctors' offices, 11 consultation rooms, and 5 conference rooms. The applicant also submits that the proposed parking facility would have an entrance on Parkville Avenue and be fully attended with 74 total accessory off-street parking spaces, including 10 reservoir parking spaces at grade, 60 parking spaces on 30 two-level stackers, and 4 ADA-compliant parking spaces at grade.

II.

Z.R. § 73-44 permits the Board to reduce the number of accessory off-street parking spaces required under Z.R. § 44-21 for UG 4 ambulatory diagnostic or treatment facilities or uses in PRC B1 located within M1-1 zoning districts to one space per 600 feet of new floor area, provided the subject Premises are located within the boundaries of the designated area in which the special permit is available, and the Board makes the following finding:

[T]hat occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or uses in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. *See* Z.R. § 73-44.

As a threshold matter, the Board notes that the Premises are located within the boundaries of the designated area in which the special permit is available. Furthermore, the Board notes that its determination herein is subject to and guided by, *inter alia*, Z.R. §§ 73-01 through 73-04.

III.

Over the course of hearings, the Board raised concerns over the side yard requirements of Z.R. § 43-303 as applied to the proposed building, and the Board instructed the

applicant to obtain a Zoning Resolution Determination ("ZRD1") from DOB to determine the provision's applicability. The Board further questioned whether the location of the vehicular ramp at the entrance of the parking facility constitutes a permitted obstruction in the R5 zoning district portion of the Premises under Z.R. § 24-33(b)(6), requesting that the applicant address the applicability of that provision within the ZRD1. In response to the Board's concerns about the applicability of Z.R. §§ 43-303 and 24-33(b)(6), the applicant submitted an approved ZRD1 from DOB, dated September 14, 2022, stating that the rear yard requirement of Z.R. § 43-303 does not apply in that the lot line and district boundary are coincident only at the intersection of such lines, and further stating that the portion of the group parking facility located in the R5 zoning district portion of the zoning lot may be considered a permitted obstruction pursuant to Z.R. § 24-33(b)(6).

Furthermore, the Board noted that safety measures would be required in the area in front of Stair A on the southern side of the Premises, and extending to the attendant booth, where employees, patients, and visitors would be walking to and from their vehicles. To alleviate these safety concerns, the Board ordered the applicant to provide a four-foot-wide, yellow-striped pedestrian space with permanent bollards to ensure separation of pedestrian and vehicular traffic in the vicinity of the attendant booth. In response, the applicant submitted revised plans showing the applicant added the requested changes to separate vehicular and pedestrian traffic in that portion of the parking facility.

In addition, the Board noted that the applicant had not initially provided a survey portraying the topographical elevations of Lot 22. To correct this, the Board directed the applicant to obtain and submit a survey showing the topographical elevations of the Premises. Moreover, the Board instructed the applicant to make the following revisions to the proposed plans: illustrate the proposed curb cuts, curb extension, and proposed bus stop and street light relocation; note the section cuts and adjacent streets on each of the section drawings; and provide a turning radius diagram, utilizing a vehicle type that is larger than a sedan, to demonstrate the state of vehicle maneuverability at the entrance of the parking garage. In response to these directions, the applicant submitted a survey showing the topographical elevations of Lot 22 in NAVD88 and revised the proposed plans to reflect the Board's requested changes including the addition of a turning radius diagram utilizing a standard bus length.

The applicant also submitted a technical memorandum detailing the results of the parking demand studies conducted by the applicant and the operational plan for the parking facility. Regarding parking demand, the memorandum represents that the peak weekday parking demand would be approximately 71 spaces during the 3:00 p.m. through 4:00 p.m. period and could be fully accommodated by the proposed parking garage with 74 spaces. Furthermore, the applicant represents that parking demand from commercial, retail, and community facility uses typically peaks in the weekday midday period and

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declines during the afternoon and evening, and that such uses would work well for the garage ramp which has only one wide lane. The applicant's technical memorandum also describes the following specifications and operations for the parking facility:

The garage includes the Department of Buildings (DOB) required area per space, which is 200 square feet per parking space located at-grade with an additional 147 square feet of maneuvering space for the vehicles that are parked on the stacker tray above grade. Each stacker is the DOB required stall size of approximately 8.5 feet by 18 feet and the two ADA van spaces are 8 feet by 18 feet with the 8 feet by 18 feet access aisles.

Vehicles would take the 15-foot-wide ramp up to the garage on the first floor. As the ramp is wide enough for one car to enter/leave at a time, a signal system will be installed to allow for clear communication between vehicles both attempting to enter and exit at the same time. Signals will be installed at three locations, including: (1) at the garage entrance near the bottom of the ramp for vehicles entering the garage, (2) near the top of the ramp for vehicles exiting the garage, and (3) near the attendant booth for vehicles exiting the garage. The light at the bottom of the ramp near the curb cut would remain green to allow vehicles to enter the garage freely and the light at the top of the ramp will remain red to control vehicles exiting the garage. If a vehicle is ready to exit the garage, the sensor at the top of the ramp would detect the awaiting exiting vehicle and temporarily turn green, holding vehicles from entering. The signal system would prioritize the vehicles and temporarily turn green, holding vehicles from entering. The signal system would prioritize the vehicles entering the parking garage to minimize the vehicles waiting at street level. Vehicles entering the parking garage would stop at the attendant booth and leave their vehicles with the garage attendants. To pick up their vehicles, the vehicle owners would wait near the attendant booth for the garage attendants to get their vehicles. The vehicle owners would enter/exit the parking garage by using the elevators next to the attendant booth or Stair A located next to the elevators to get from/to the lobby.

In addition, garage attendants would manage the operation by parking cars by the expected leaving time. Vehicles that are likely to stay late will be placed in the back row of the upper stacker, while vehicles that are likely to leave quicker would be placed in the bottom row of the front stacker.

Moreover, the Board notes that if the applicant seeks to increase the number of parking spaces and, in turn, permanently or temporarily reduce the scope of the requested waiver if the demand is not sufficiently addressed

by the study or the proposed design, it may do so by letter of substantial compliance.

IV.

By correspondence dated December 9, 2021, the Fire Department states that the Bureau of Fire Prevention has reviewed the application and has no comment with respect to the parking reduction but has concerns with FDNY access to the roof setbacks on the third, fourth, and fifth floors, and the roof. As per 2014 FC Section 504.4.4(5) Rooftop clear path, as described in this section, a fixed ladder or other approved means shall be provided to afford access along the clear path from one roof level to the next. FDNY is requesting that two ladders be provided at each roof setback fronting on McDonald Avenue and that openings of three feet be provided at each ladder location. Gates can be provided at each opening. Padlocks can be provided, so as not to permit access by others. FDNY has reviewed the application (NB# 321598035) filed with the Borough Office of the Department of Buildings and noted that an objection was not provided for FDNY access. FDNY requests that the applicant provide rooftop access, prior to the Board's determination of the special permit.

By correspondence dated September 29, 2022, FDNY states that the Bureau of Fire Prevention has reviewed the revised plans submitted to the Board, whereby the applicant has provided ladders at each setback. Furthermore, FDNY states that these ladders will provide access to the various floors for firefighting exterior operations, and, therefore, FDNY has no further objections to the application.

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. 21BSA024K, dated November 14, 2022. 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 March 18, 2022, the New York City Department of Transportation ("DOT") states that DOT and the Metropolitan Transportation Authority ("MTA") mutually agreed that the current westbound B11 bus stop on Parkville Avenue between McDonald Avenue and 47th Street can be relocated to the rear side of Parkville Avenue and 47th Street. In order to ease the right-hand turn that MTA bus operators will be making at 47th Street, MTA will be requesting that DOT place a "No Standing" sign for the current first parking spot on 47th Street.

By correspondence dated November 2, 2022, DOT states the following conditions for relocation of the street light at private expense:

1. It will be necessary for the applicant to file

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and secure approvals of amended plans with Builders Pavement Section of DOT, 55 Water Street. These plans must indicate all street lighting relocations as approved by the Division of Street Lighting.

2. The applicant will bear all costs involved in relocation of the street light in question as directed by this Division and agrees to hold the City of New York harmless for any situation arising there from.
3. It will be necessary for the applicant to make financial arrangements with the Consolidated Edison Company for relocating the electrical service as indicated on the attached preliminary drawing. To expedite this matter, the applicant should send a copy of your driveway permit together with a copy of DOT, Division of Street Lighting's letter of preliminary approval and drawing to the utility company's energy services.
4. All work must be done by a licensed New York City electrician.
5. Until the new street light is energized, a temporary lighting must be installed and maintained by the applicant at or near the old location. Lamp maintenance only is the responsibility of the Division of Street Light Maintenance Contractor provided units are accessible and are standard City equipment.
6. The signature of a duly authorized officer of the organization, at the foot [of the letter], and the return to the Division of Street, 34-02 Queens Boulevard, Long Island City, New York, 11101, Attention of _____ will constitute consent to the foregoing.
7. Upon receipt of this document completed and signed and written notification (receipt, etc.) that financial arrangements have been satisfactorily completed with the Electrical Contractor and Con Edison, the necessary orders will be issued by the Division of Street Lighting to the contractor and Edison, permitting street light relocation. The attached "preliminary" drawing is for new pole location only and is not for work to be done.
8. Certificate of Compliance is required to be signed off upon completion of work by DOT inspection.

Moreover, at hearings, the Board also raised concerns about the location of the entrance to the parking garage on Parkville Avenue, stating that the proposed location would be adjacent to residential use and would require DOT to approve relocation of the existing bus stop, as discussed above. To ensure compliance with DOT's conditions of approval, the Board directed the applicant to prepare a commitment letter memorializing DOT's conditions and to indicate compliance with such conditions on the proposed plans. The applicant subsequently submitted revised plans

and a letter committing to the following:

When the Light Pole Relocation occurs and when the Bus Stop Relocation occurs and the Department determines that the construction of a curb extension (the "Curb Extension") is geometrically feasible and is necessary for ADA compliance, we commit to the following:

1. We will bear all costs involved in the design and construction of the Light Pole Relocation, the Bus Stop Relocation and the construction of the Curb Extension and agree to hold the City of New York harmless for any situation directly arising there from.
2. All work shall be done by a company that is licensed in the City and State of New York to perform the Light Pole Relocation, the Bus Stop Relocation and the construction of the Curb Extension.
3. Prior to an application for a building permit, we will submit all required design drawings for the Curb Extension, including auto-turn drawings, designed per DOT standards, for review and approval by DOT.
4. The final location of the Light Pole Relocation is subject to DOT review and approval.
5. Our signature, by a duly authorized officer of 15 Parkville LLC, and the return to the New York City Department of Transportation, 34-02 Queens Boulevard, Long Island City, NY 11101 will constitute our consent to the foregoing.

By correspondence dated March 1, 2022, the Landmarks Preservation Commission ("LPC") states that the subject Premises have no architectural or archaeological significance.

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. §§ 73-44 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*, on a site primarily located within an M1-1 zoning district and partially located within an R5 zoning district, the reduction of required accessory off-street parking spaces for a UG 4 ambulatory diagnostic or treatment facility and UG 6 commercial use in PRC B1, contrary to Z.R. § 44-21, *on condition* that all work, site conditions and operations shall conform to

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drawings filed with this application marked “Board Approved November 14, 2022” – Twenty-Three (23) sheets; and on *further condition*:

THAT in order to provide an Americans with Disabilities Act-compliant bus stop, the applicant will explore and install a curb extension at the relocated bus stop, to DOT standards, if determined to be geometrically feasible by DOT, prior to the issuance of the building permit;

THAT the applicant must submit to DOT the required drawings, as per DOT standards, and materials needed for DOT’s review and approval of the above measures, including street light relocation;

THAT prior to the issuance of the temporary certificate of occupancy, the construction of the bus stop relocation and street light relocation shall be completed and approved by DOT;

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. 2020-86-BZ”) shall be obtained within four years, by November 14, 2026;

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

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/configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 14, 2022.

2021-55-BZ

APPLICANT – Eric Palatnik, P.C., for H & Z Building Corp., owner.

SUBJECT – Application August 24, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district.

PREMISES AFFECTED – 134-16 35th Avenue, Block 4958, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated July 21, 2021, acting on New Building Application No.

Q00549624-11 reads, in pertinent part:

1. ZR 61-21/73-66: As per ZR 61-21 & ZR 73-66, proposed 12 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, pursuant to Z.R. §§ 73-66 and 73-03, to permit, within a C2-2 (R6) zoning district, the development of a 12-story mixed-use commercial, community facility, and residential building that would not comply with height restrictions applicable near major airports under Z.R. § 61-21.

A public hearing was held on this application on August 9, 2022, after due notice by publication in *The City Record*, with a continued hearing on September 13, 2022, and then to decision on November 14, 2022. Community Board 7, Queens, waived their recommendation of this application. The Board also received four form letters of objection, citing concerns about the proposed development’s potential impacts of increased noise and traffic, loss of airflow and sunlight, and damage to the structural integrity of neighboring buildings.

I.

The Premises are located on the south side of 35th Avenue, between Prince Street and Farrington Street, within a C2-2 (R6) zoning district, in Queens. With approximately 75 feet of frontage along 35th Avenue, an irregular depth ranging from 84 feet to 174 feet, and 10,469 square feet of lot area, the Premises are currently vacant.

The applicant proposes to construct a 12-story mixed use commercial, community facility, and residential building with approximately 57,742 square feet of floor area, of which 7,875 square feet of floor area on the first story would be dedicated to Use Group (“UG”) 6 commercial use, 288 square feet of floor area on the second story would be dedicated to UG 4 community facility use, and 49,580 square feet of floor area on the third through twelfth stories would be dedicated to UG 2 residential use. Furthermore, the applicant describes that the proposed development is a height factor building subject to a sky exposure plane of 7.6 to 1 that rises to a maximum building height of approximately 179 feet. The proposed building’s total height for purposes of the Federal Aviation Administration (“FAA”) is approximately 179 feet above ground level (“AGL”) or 213 feet above mean sea level (“AMSL”), which is equivalent to 213 feet (NAVD88). The applicant states that the height of 213 feet (NAVD88) includes the building’s mechanical bulkhead that would be equipped with safety lighting as required by the FAA and is a permitted obstruction pursuant to Z.R. §§ 35-61 and 23-62(g).

The approach surface of LaGuardia Airport is the most restrictive in relation to the location of the proposed development and is, therefore, the surface which the proposed development must not penetrate. *See* Z.R. § 61-21.

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The applicant represents that the subject site is located within the inner section of the approach surface for LaGuardia Airport Runway 31. The inner section of the approach surface for LaGuardia Airport Runway 31 begins 200 feet from the end of the runway at a width of 1,000 feet and extends 10,000 feet outbound to a width of 4,000 feet. The outer section then begins, extending another 15,000 feet outbound to a width of 8,500 feet. The applicant declares that the along-track distance of the subject site from Runway 31 at LaGuardia Airport is approximately 7,048.40 feet. The applicant represents that the proposed development would penetrate the approach surface for LaGuardia Airport Runway 31 above a height of approximately 144 feet (NAVD88). The applicant notes that the proposed development, at 213 feet (NAVD88) inclusive of permitted obstructions, penetrates the approach surface by 50.50 feet at its highest point, pursuant to Z.R. § 61-21.

II.

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.* (emphasis in original to indicate defined terms). 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 FAA issued 11 Determinations of No Hazard to Air Navigation on October 12, 2021, under Aeronautical Study No. 2021-AEA-8365-OE at latitude 40-45-50.90N, longitude 73-49-58.00W, 179 feet AGL, and 213 feet AMSL (“Building Point 1”); under Aeronautical Study No. 2021-AEA-8366-OE at latitude 40-45-51.10N, longitude 73-49-57.30W, 178 feet AGL, and 214 feet AMSL (“Building Point 2”); under Aeronautical Study No. 2021-AEA-8367-OE at latitude 40-45-50.40N, longitude 73-49-56.90W, 178 feet AGL, and 216 feet AMSL (“Building Point 3”); under Aeronautical Study No. 2021-AEA-8368-OE at latitude 40-45-50.20N, longitude 73-49-57.30W, 157 feet AGL, and 216 feet AMSL (“Building Point 4”); under Aeronautical Study No. 2021-AEA-8369-OE at latitude 40-45-47.70N, longitude 73-49-56.10W, 159 feet AGL, and 222 feet AMSL (“Building Point 5”); under Aeronautical Study No. 2021-AEA-8370-OE at latitude 40-45-47.60N, longitude 73-49-56.50W, 160 feet AGL, and 222 feet AMSL (“Building Point 6”); under

Aeronautical Study No. 2021-AEA-8371-OE at latitude 40-45-48.60N, longitude 73-49-57.10W, 158 feet AGL, and 219 feet AMSL (“Building Point 7”); under Aeronautical Study No. 2021-AEA-8372-OE at latitude 40-45-48.50N, longitude 73-49-57.40W, 158 feet AGL, and 218 feet AMSL (“Building Point 8”); under Aeronautical Study No. 2021-AEA-8373-OE at latitude 40-45-49.10N, longitude 73-49-57.60W, 158 feet AGL, and 217 feet AMSL (“Building Point 9”); under Aeronautical Study No. 2021-AEA-8374-OE at latitude 40-45-49.10N, longitude 73-49-57.30W, 158 feet AGL, and 217 feet AMSL (“Building Point 10”); and under Aeronautical Study No. 2021-AEA-8375-OE at latitude 40-45-50.00N, longitude 73-49-57.70W, 158 feet AGL, and 215 feet AMSL (“Building Point 11”) (collectively, the “FAA No Hazard Determinations”). The reviewed materials include a survey and 11 study points of the proposed development on the zoning lot keyed to maximum heights in AGL and AMSL, 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 navigable airspace by aircraft or on the operation of any air navigation facilities.” According to the FAA Determination, the proposed development “would not be a hazard to air navigation” provided the following conditions are met:

1. The proposed development must be marked/lighted in accordance with FAA advisory circular 70/7460-1 M, Obstruction Marking and Lighting, red lights - Chapters 4, 5 (Red), & 15.
2. Any failure or malfunction that lasts more than 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 operation is restored, notify the same number.
3. 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 five days after the construction reaches its greatest height (7460-2, Part 2).

The FAA Determination further states that the proposal would have no effect on any existing or proposed arrival, departure, or en route instrument flight rule (“IFR”) operations, minimum flight altitudes, minimum vectoring altitudes (“MVA”), aeronautical procedures, or on any aeronautical facilities at LGA, or at any other known public use or military airport. Information on the proposal shall be forwarded for appropriate aeronautical charting. Study for possible VFR effect disclosed the proposal would have no effect on any existing or proposed arrival or departure VFR operations or procedures. The proposal would not conflict with any airspace required to conduct normal VFR traffic pattern and/or visual approach operations at LGA, or any other public-use, joint-use, or military airport. The proposal

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would not require a VFR aircraft to change its regular flight course or altitude, restrict VFR operations in any way, or create a dangerous situation during a critical phase of flight while operating under VFR conditions. Therefore, at a height of up to 179 feet AGL, the proposal would have no substantial adverse effects on any existing or proposed VFR arrival, VFR departure, en route, minimum flight altitudes, or VFR helicopter routes in the vicinity of this location. The structure should be appropriately marked/lighted to make it more conspicuous to airmen should circumnavigation be necessary. The cumulative impact of the proposals, when combined with other proposed and existing structures, is not considered to be significant. The studies did not disclose any adverse effects on existing or proposed public-use or military airports or navigational facilities, nor does the proposal affect the capacity of any known existing or planned public-use or military airport.

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.” See 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,” as per Z.R. § 73-66 (emphasis in original to indicate defined terms).

In support of this contention, the applicant notes the FAA No Hazard Determinations’ conclusion that the proposed development, pursuant to an aeronautical study, “would not have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on any air navigation facility.” According to the FAA Determination, the proposed development “would not be a hazard to air navigation”, subject to certain conditions described above and noted on the approved plans. Moreover, the Port Authority Letter confirms that there are no additional comments to the FAA Determination.

Additionally, the Port Authority of New York and New Jersey states, by letter dated December 9, 2021, that it requests that all conditions stated in the FAA No Hazard Determination letter be followed and that the proposed development project adhere to the heights stipulated in the FAA’s determination. Exceeding these heights would warrant reevaluation by the FAA and could result in substantial adverse effects to air navigation. The Port Authority further states that separate 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, and studies for this equipment should be filed at least 90-120 days prior to the start of operations.

By letter dated September 14, 2022, the New York City Landmarks Preservation Commission (“LPC”) finds

that the subject site has no architectural or archaeological significance.

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 Z.R. §§ 73-01 through 73-04, including the general findings of Z.R. § 73-03.

The applicant submits that the advantages to the community from construction of the proposed building, including the creation of new housing, 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. Additionally, the applicant represents that it conducted an airport/aircraft noise analysis of the proposed development and determined that the proposed development is not located within the day-night average sound level (“DNL”) contour of 65 dBA for LGA Airport, and, therefore, the proposed development would not have significant adverse noise impacts from airport/aircraft and no further noise analysis is required.

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.

III.

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*, within a C2-2 (R6) zoning district, the development of a 12-story mixed-use commercial, community facility, and residential 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 “Board Approved: November 14, 2022”—Ten (10) sheets; and *on further condition*:

THAT construction and activity at the Premises shall

MINUTES

proceed in accordance with DOB TPPN # 10/88 as reviewed, determined, and enforced by the Department of Buildings;

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation under Aeronautical Study Nos. No. 2021-AEA-8365-OE, 2021-AEA-8366-OE, 2021-AEA-8367-OE, 2021-AEA-8368-OE, 2021-AEA-8369-OE, 2021-AEA-8370-OE, 2021-AEA-8371-OE, 2021-AEA-8372-OE, 2021-AEA-8373-OE, 2021-AEA-8374-OE, 2021-AEA-8375-OE, issued on October 12, 2021, shall be followed, including:

1. The proposed development must be marked/lighted in accordance with FAA advisory circular 70/7460-1 M, Obstruction Marking and Lighting, red lights - Chapters 4, 5 (Red) & 15.
2. Any failure or malfunction that lasts more than 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 operation is restored, notify the same number.
3. 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);

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. 2021-55-BZ"), shall be obtained within four years, by November 14, 2026;

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 14, 2022.

2022-49-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 73rd Realty LLC, owner.

SUBJECT – Application July 29, 2022 – Re-instatement (11-41) of a previously approved variance which permitted the operation of a knitting mill (UG 17B) with accessory storage which expired on March 19, 2002; Change of use to a UG(17A) contracting establishment. Extension of Time to

Obtain a Certificate of Occupancy which expired on March 19, 1993; Waiver of the Board's Rules of Practice and Procedures. R4-1 zoning district.

PREMISES AFFECTED – 71-34 73rd Street, Block 3690, Lot 22, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated October 4, 2022, acting on DOB Alteration Application No. Q08012607, reads in pertinent part:

The proposed change in use is contrary to BSA Calendar Number 628-29-BZ and must be referred to the Board of Standards and Appeals to amend the BSA approval accordingly.

This is an application for a waiver of the Board's Rules of Practice and Procedures, a reinstatement of a variance, under Z.R. § 11-411, that permitted the use of the Premises as a knitting mill (UG 17B) with accessory storage and expired on March 20, 2002, a change in use, under Z.R. § 11-413, from a kitting mill (UG 17B) to a contractors' establishment (UG 17A), and an extension of time to obtain a certificate of occupancy, which expired on September 15, 1993.

A public hearing was held on this application on October 3, 2022, after due notice by publication in *The City Record*, and then to decision on November 14, 2022. Commissioner Ottley-Brown and Commissioner Yoon performed inspections of the Premises and surrounding area. Community Board 5, Queens, recommends approval of this application. The Board received four form letters in opposition to this application raising concern over the potential adverse impact from commercial use on the residential neighborhood.

The Premises are located on the west side of 73rd Street, between Cooper Avenue and Central Avenue, within an R4-1 zoning district, in Queens. With approximately 50 feet of frontage along 73rd Street, 100 feet depth, and 5,000 square feet of lot area, the Premises are occupied by an existing one-story kitting mill (UG 17B) with approximately 5,000 square feet of floor area.

The Board has exercised jurisdiction over the Premises since March 4, 1930, when, under BSA Cal. No. 628-29-BZ, the Board granted a variance to permit the erection and maintenance of a business building on condition that the building not exceed in height one story above grade; the rear and gable walls be unpierced throughout their entire height and length; the front elevation be finished with face brick and architectural terra cotta or natural stone trimming, in substantial accordance with filed plans; the use and occupancy be restricted to retail business use; there be no automobiles maintained under live storage; there be no

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automobile repair work operated or conducted on the Premises; any advertising displayed be restricted to flat, fixed lettering attached to the plate glass show window of store front; and, all permits be obtained within six months and all work completed within one year. Subsequently, from time to time, the grant was amended, and the term was extended.

On March 20, 1962, under BSA Cal. No. 628-29-BZ, the Board permitted a change in use, from storage of plumbing and heating supplies and plumbing shop to a kitting mill with accessory storage, for a term of ten years on condition that the work be completed in accordance with the filed plans; the loading and unloading all be done within the building; working hours be restricted to 8:00 a.m. to 6:00 p.m.; there be no work on Sundays; all laws, rules, and regulations applicable be complied with; and, required permits be obtained, work completed, and a certificate of occupancy obtained within one year.

On May 30, 1972, under BSA Cal. No. 628-29-BZ, the Board extended the term for ten years, to expire on March 20, 1982, on condition that a new certificate of occupancy be obtained.

On September 28, 1982, under BSA Cal. No. 628-29-BZ, the Board waived its Rules of Procedure and extended the term for ten years, to expire on March 20, 1992.

On September 15, 1992, under BSA Cal. No. 628-29-BZ, the Board extended the term for ten years, to expire on March 20, 2002, on condition that street trees be planted and adequately maintained, as shown on plans; the Premises be maintained graffiti free; the dumpster be kept indoors and taken outdoors only prior to collection; the Premises be kept in substantial compliance with the approved plans; 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 15, 1993.

The term of the variance and the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than ten years since the expiration of the term, and more than 30 days since the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of §§ 1-07.3(b)(4)(i) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application. In accordance with the Board's Rules, the applicant seeks a reinstatement of the variance approval under BSA Cal. No. 628-29-BZ, under Z.R. § 11-411, and submits that the Premises have been used continuously from 1999 through 2021; absent a waiver of the Board's Rules, the applicant states that the existing building, that has housed commercial and manufacturing use since 1930, would become functionally obsolete and would require significant cost to redevelop the Premises with conforming use. Additionally, the applicant submits that the Premises has been occupied by commercial use for 90 years and are located on a block with a strong commercial presence. As such, the applicant submits that the reinstatement of the variance will not substantially impair the appropriate use

and development of adjacent properties.

The applicant also seeks a change in use, in accordance with Z.R. § 11-413, from a knitting mill (UG 17B) to a contractors' establishment (UG 17A). The applicant submits that the previously approved lot area will not change, and no construction work is proposed to facilitate the change in use. The applicant states that the contractors' establishment will operate in accordance with the Board's conditions. Specifically, the applicant states that the use is proposed to operate 8:00 a.m. to 6:00 p.m., and closed on Sundays; the dumpster will continue to be maintained inside except at collection times; and, the Premises continues to be maintained free of graffiti. Further, in accordance with Z.R. § 52-332(b), the applicant proposes to change the use at the Premises from Use Group 17B to Use Group 17A use. The applicant submits that proposed use will meet the high-performance standards required in M1 district. Further, the applicant represents that all activity related to the new use will take place within the building and the structure on the Premises is completely enclosed, obviating the need for a fence around the development.

Based upon its review of the record, the Board has determined that the requested reinstatement and change in use 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 *reinstates* the variance, under BSA Cal. No. 628-29-BZ dated March 4, 1930, as amended through September 15, 1992, so that as amended this portion of the resolution shall read: "to extend the term for ten years, to expire on November 14, 2032, and permit a change in use, from kitting mill (UG 17B) to a contractors' establishment (UG 17A), *on condition* that all work, site conditions, and operations shall substantially conform to drawings filed with this application marked "Board Approved November 14, 2022" – Six (6) sheets; and *on further condition*:

THAT the term shall expire on November 14, 2032;

THAT all deliveries shall be maintained within the property;

THAT the Premises shall be maintained graffiti free;

THAT the dumpster shall be kept indoors and taken outdoors only prior to collection;

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

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2022-49-BZ"), shall be obtained within 18 months, by May 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;

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, November 14, 2022.

233-15-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP., for CSC 4540 Property Co. LLC, owner.

SUBJECT – Application October 2, 2015 – Variance (§72-21) to permit a mixed-use residential building with retail on the ground floor, contrary to use regulations (ZR §42-10), maximum building height (ZR §62-341(c)(2), tower floor plate in excess of 7,000 sq. ft. (ZR 62-341(c)(4)), and setback above base height from a shore public walkway (ZR §62-341(a)(2). M1-4 ZD and waterfront area.

PREMISES AFFECTED – 45-40 Vernon Boulevard, Block 26, Lot(s) 4 & 8, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for continued hearing.

2020-50-BZ

APPLICANT – Law Office of Lyra J. Altman, for Haim Haddad, owner.

SUBJECT – Application June 8, 2020 – 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.

PREMISES AFFECTED – 2328 Olean Street, Block 7677, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for adjourned hearing.

2021-41-BZ

APPLICANT – Akerman LLP, for Inwood HT Equities LLC, owner.

SUBJECT – Application June 23, 2021 – Variance (§72-21) to permit the development of a nine (9) story residential building contrary to height (ZR §23-662(a)) and parking (ZR §25-23). R7A & R7-2/C2-4 Special Inwood District.

PREMISES AFFECTED – 22-38 Cumming Street, Block 2237, Lot(s) 16 & 18, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to April 10-11, 2023, at 10 A.M., for continued hearing.

2021-42-BZ

APPLICANT – Law Office of Lyra J. Altman, for Project L29 LLC, owner.

SUBJECT – Application June 11, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva

Ohr Shraga D’Veretzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). R2 zoning district.

PREMISES AFFECTED – 2901 Avenue L, Block 7629, Lot(s) 6 and 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 5-6, 2022, at 10 A.M., for continued hearing.

2021-69-BZ

APPLICANT – Eric Palatnik, P.C., for IVY CIP LAND HOLDINGS, LLC, owner.

SUBJECT – Application October 29, 2021 – Special Permit (§73-243) to permit an accessory drive-through a accessory to an Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-15. C1-3/R2 zoning district.

PREMISES AFFECTED – 240-10 Merrick Boulevard, Block 13204, Lot 97, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for continued hearing.

2022-27-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Success Academy Charter Schools, Inc., owner.

SUBJECT – Application May 11, 2022 – Special Permit (§73-19) to permit the construction of a new school (UG 3) (Success Academy) contrary to ZR 42-10. M1-2 zoning district.

PREMISES AFFECTED – 101 East 150th Street, Block 2354, Lot 1, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for adjourned hearing.

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PUBLIC HEARINGS
MONDAY-TUESDAY, NOVEMBER 14-15, 2022
2:00 P.M.

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

ZONING CALENDAR

2020-85-BZ

APPLICANT – Eric Palatnik, P.C., for 114 Kingsland LLC, owner.

SUBJECT – Application October 28, 2020 – 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.

PREMISES AFFECTED – 114 Kingsland Avenue, Block 2840, Lot 3, Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for continued hearing.

2021-1-BZ

APPLICANT – Capell Barnett Matalon & Schoenfeld LLP, for Trinity Lutheran Church, owner.

SUBJECT – Application January 8, 2021 – Variance (§72-21) to permit the enlargement of a school (Trinity Lutheran Church) contrary to underlying bulk requirements. R6B and R6A zoning districts.

PREMISES AFFECTED – 31-18 37th Street, Block 649, Lot 42, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for continued hearing.

2021-23-BZ

APPLICANT – Law Office of Lyra J. Altman, for Abraham Shiloach and Deborah Shiloach, owners.

SUBJECT – Application March 23, 2021 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence. Waiver of yards, open, lot coverage, perimeter wall. R3-2 zoning district.

PREMISES AFFECTED – 2315 Avenue S, Block 6829, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

2021-82-BZ

APPLICANT – Eric Palatnik, P.C., for ADL 218 Hamilton LLC, owner.

SUBJECT – Application November 23, 2021 – Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. M1-1 zoning district.

PREMISES AFFECTED – 218 Hamilton Avenue, Block 513, Lot(s) 29,36 (tent. 29), Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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DIRECTORY

SHAMPA CHANDA, *Chair*

SALVATORE SCIBETTA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

CHRIS YOON

Commissioners

Carlo Costanza, *Executive Director*

Chase Vine, *Counsel*

OFFICE - 22 Reade Street, 1st Floor, New York, N.Y. 10007

HEARINGS HELD -

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

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61-10 Menahan Street, Block 3523, Lot(s) 0037 & 0038, Borough of **Queens, Community Board: 5**. Proposed construction of a semi-detached cellar, three story, three family building located within the bed of a mapped street contrary to General City Law Section 35 within an R5B zoning district. R58 district.

2022-90-A

61-12 Menahan Street, Block 3523, Lot(s) 0037 & 0038, Borough of **Queens, Community Board: 5**. Proposed construction of a semi-detached cellar, three story, three family building located within the bed of a mapped street contrary to General City Law Section 35 within an R5B zoning district. R5B district.

2022-91-BZ

1492 East 24th Street, Block 7677, Lot(s) 0002, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R-2 zoning district. R2 district.

2022-92-BZ

950 West Fingerboard Road, Block 3197, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Application for a variance/special permit under ZR Section 72-21 & ZR Section 73-19 to build a Use Group 3 religious school and a Use 3 dormitory contrary to ZR 42-10 within a M1-1 and R-2 Zoning District. M1-1/R2 district.

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

CALENDAR

**TELECONFERENCE PUBLIC HEARINGS
MONDAY-TUESDAY, JANUARY 23-24, 2022
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, January 23rd, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday January 24th, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

319-53-BZ

APPLICANT – William Consuegra by Majed ElJamal, for 222nd Street Realty, owner.

SUBJECT – Application August 23, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Repair Facility (UG 16B) which expired on January 31, 2021, Waiver of the Board's Rules of Practice and Procedures. Amendment for the parking spaces. R5 zoning district.

PREMISES AFFECTED – 1135 East 222nd Street aka 3651 Eastchester Road, Block 4900, Lot 2, Borough of Bronx.

COMMUNITY BOARD #12BX

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner.

SUBJECT – Application June 1, 2022 – Amendment of a previously approved pre-1961 variance permitting the operation of an Automotive Service Station (UG 16B). The amendment seeks to make certain modifications to the site contrary to the previous Board approval. R4-1 zoning district.

PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8

Borough of Queens.

COMMUNITY BOARD #4Q

651-60-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Briar Hill Realty, LLC, owner.

SUBJECT – Application August 23, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Repair Facility (UG 16B) which expired on January 31, 2021, Waiver of the Board's Rules of Practice and Procedures. Amendment to the parking spaces. R5 zoning district.

PREMISES AFFECTED – 600 West 246th Street, Block 5909, Lot 825, Borough of Bronx.

COMMUNITY BOARD #12BX

309-09-BZIII

APPLICANT – Eric Palatnik, P.C., for Yong Lin, owner.
SUBJECT – Application November 9, 2022 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously approved Variance that permitted a mixed use building which expired on October 30, 2022. R6A/R5/C2-3 Zoning district.

PREMISES AFFECTED – 2173 65th Street, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

243-13-BZ

APPLICANT – Greenberg Traurig, LLP, VS 125 LLC, owner.

SUBJECT – Application November 15, 2022 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously approved variance permitting a mixed use building which expired on February 4, 2022. C5-5 Zoning district.

PREMISES AFFECTED – 125 Greenwich Street, a/k/a Thames Street, Block 51, Lot(s) 13,14, Borough of Manhattan.

COMMUNITY BOARD #1M

2017-43-BZ

APPLICANT – Terminus Group, LLC, for James Donofrio, owner.

SUBJECT – Application December 9, 2022 – Extension of time to complete construction and obtain a Certificate of Occupancy on a previously approved variance which expired on January 15, 2023 for a single-family home with non-complying side yards and open space within an R3A zoning district.

PREMISES AFFECTED – 140 Hendricks Avenue, Block 44, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

2022-76-BZ

APPLICANT – Nasir J. Khanzada, for Adelmo Cioffi, owner.

SUBJECT – Application September 16, 2022 – Reinstatement (11-41) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on November 11, 1989; Amendment to convert automotive service bays to an accessory convenience store; Extension of Time to Obtain a Certificate of Occupancy which expired on January 11, 2001; Waiver of the Board's Rules of Practice and Procedures. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 175-33 Horace Harding Expressway, Block 6890, Lot 24, Borough of Queens.

COMMUNITY BOARD #11Q

CALENDAR

APPEALS CALENDAR

2021-48-A & 2021-49-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Gino Savo, owner.

SUBJECT – Application July 27, 2021 – Proposed development of a one-story warehouse (UG 16B) not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special South Richmond District.

PREMISES AFFECTED – 42 & 72 Schmeig Avenue, Block 7528, Lot(s) 19 & 74 (tent), Borough of Staten Island.

COMMUNITY BOARD #3SI

2022-36-A

APPLICANT – Terminus Group, LLC, for VG 814 Richmond Terrace LLC, owner.

SUBJECT – Application June 10, 2022 – Proposed enlargement of an existing building which is within the unbuild portion of the mapped street, contrary to General City Law 35. M1-1 zoning district.

PREMISES AFFECTED – 814 Richmond Terrace, Block 70, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

ZONING CALENDAR

2022-37-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kassem Metta and Frieda Esses, owners.

SUBJECT – Application June 15, 2022 – Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to underlying bulk requirements. R3-2 zoning district.

PREMISES AFFECTED – 1864 East 22nd Street, Block 6827, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2022-38-BZ

APPLICANT – Sheldon Lobel, P.C., for Usher Brunner, owner.

SUBJECT – Application June 16, 2022 – Variance (§72-21) to permit the development of a House of Worship (UG 4A) contrary to ZR §§ 24-11 (lot coverage), 24-361 (rear yard), 24-522 (maximum height of walls and required setbacks), and 23-62 (permitted obstructions). R6 zoning district.

PREMISES AFFECTED – 4902 & 4920 14th Avenue, Block 5642, Lot(s) 33, 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2022-47-BZ

APPLICANT – Eric Palatnik, P.C., for Moshe Rosner, owner.

SUBJECT – Application July 28, 2022 – Special Permit (§73-622) to permit the enlargement of an existing two-story, semi-detached home contrary to ZR §23-641 side yard regulations. R5 zoning district.

PREMISES AFFECTED – 2052 63rd Street, Block 5542, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #11BK

2022-51-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Jason Rosenthal, owner.

SUBJECT – Application July 29, 2022 – Variance (§72-21) to permit the development of a two-story residential dwelling contrary to underlying bulk requirements. R5 zoning district.

PREMISES AFFECTED – 107-20 154th Street, Block 10131, Lot 30, Borough of Queens.

COMMUNITY BOARD #12Q

2022-79-BZ

APPLICANT – Holland & Knight LLP, for Shore Hill Housing Company Inc., owner; RAHF Shore Hill LLC, lessee.

SUBJECT – Application September 29, 2022 – Special Permit (§73-434) to permit the reduction of 56 accessory off-street parking spaces required for 557 existing AIRS housing units to facilitate the development of a new AIRS building containing 137 income restricted housing units contrary to ZR §25-252. R7A zoning district/Special Bay Ridge District.

PREMISES AFFECTED – 9000 Shore Road, Block 6078, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

Shampa Chanda, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY, DECEMBER 5-6, 2022
10:00 A.M.**

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

COMPLIANCE HEARING

2019-27-BZ

APPLICANT – Law Office of Jay Goldstein for Congregation P’nei Menachem, owner.

SUBJECT – Application November 21, 2022 – 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 24-11 (lot coverage). R5 zoning district.

PREMISES – 4533 18th Avenue, Southeastern side of 18th Avenue between McDonald Avenue and 47th Street, Block 5439, Lot 20. Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for continued hearing.

SPECIAL ORDER CALENDAR

1069-27-BZIII

APPLICANT – Glen V. Cutrona, AIA, for Frank Mormando, owner.

SUBJECT – Application March 2, 2021 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 2021. C1-2/R5 zoning district.
PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, Block 5565, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Chanda, Vice-Chair Scibetta, Commissioner Ottley-Brown and Commissioner Sheta...4
Negative:.....0
Abstain: Commissioner Yoon.....1

THE RESOLUTION –

This is an application for an extension of term, pursuant to Z.R. § 11-411, for the continued operation of an automatic automobile laundry, simonizing room, and offices, which expired on March 6, 2021.

A public hearing was held on this application on March 28, 2022, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2022, and then to decision on December 5, 2022. Commissioner Scibetta performed an inspection of the site and surrounding

neighborhood. Community Board 11, Brooklyn, recommends approval of this application.

The Premises are a triangular lot located on the southwest corner of New Utrecht Avenue and Ovington Avenue, within a C1-2 (R5) zoning district, in Brooklyn. With approximately 216 feet of frontage along New Utrecht Avenue, 95 feet of frontage along Ovington Avenue, and 197 feet of frontage along 15th Avenue, and 9,385 square feet of lot area, the Premises are occupied by a one-story building which includes auto laundry, store, garage, soap room, electric room, office, and toilets.

The Board has exercised jurisdiction over the Premises since March 6, 1956, when, under the subject calendar number, the Board granted a variance in the application of the use district regulations of the Zoning Resolution for a term of 15 years, to expire on March 21, 1971, to permit the development of the Premises with an automatic auto laundry, simonizing room and office, substantially as proposed and as indicated on plans filed with the application, on condition that all buildings and uses on the Premises be removed and the site developed substantially as indicated on such plans; curb cuts for motor vehicle entrance consist of one cut on Ovington Avenue, not more than 30 feet in width and two cuts, each 20 feet in width, one to New Utrecht Avenue toward the north and one on 15th Avenue as shown; in all other respects the building and occupancy comply with all laws, rules, and regulations applicable thereto; the work carried on in the simonizing room be subject to a permit issued by the fire commissioner; the balance of the site where not occupied by proposed building be left vacant as a reservoir space for cars; all spaces not occupied by buildings be paved with concrete or asphaltic paving; there be erected along the building lines of New Utrecht and Ovington Avenues, except where curb cuts are permitted, a woven wire fence of the chain link type erected on a masonry base to a height not less than 5 feet 6 inches; at the intersection of New Utrecht and 15th Avenues, there be erected a block of concrete not less than 12 inches in height extending along each street for not less than five feet from the intersection; signs be restricted to a permanent sign on the accessory building, facing New Utrecht Avenue; all windows on 15th Avenue have sills not less than five feet above grade, as shown on plans; such portable fire-fighting appliances be installed as the fire commissioner direct; sidewalks and curbing around the Premises be reconstructed or restored to the satisfaction of the borough president; and all permits be obtained, including a certificate of occupancy and all work completed within the requirements of the Zoning Resolution.

On February 2, 1971, under the subject calendar number, the Board amended the resolution to extend the term of the variance for ten years, to expire on March 6, 1981, on condition that the barrels be removed from the unbuilt upon portion of the Premises; the fences be repaired and maintained in compliance with the requirements of the resolution; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained.

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On May 5, 1981, under the subject calendar number, the Board further amended the resolution to permit an extension of term for ten years, to expire on March 6, 1991, on condition that this site be operated at all times in such a fashion so as to minimize traffic congestion; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by May 5, 1982.

On October 20, 1992, 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 ten years, to expire on March 6, 2001, on condition that there be no parking of vehicles on the sidewalk; there be no vacuum cleaning units on the north end of the site; the vacuum cleaning units along the east side of the existing building be adequately maintained; the signs be in compliance with the Board's approved plans and the Premises be in substantial compliance with existing and proposed conditions drawings; and other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by October 20, 1993.

On October 8, 2002, under the subject calendar number, the Board further amended the resolution to permit the extension of the term of the variance for an additional ten years, to expire on March 6, 2011 and to reflect changes in the layout of the Premises, namely the addition of an attendant's booth and the relocation of the canopy, on condition that the Premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; the hours of operation for the automobile vacuums be limited from 9:00 a.m. to 7:00 p.m.; there be no parking of automobiles on the sidewalk at any time; there be no outdoor automobile repair done on the Premises; the Premises remain graffiti free at all times; there be no change in use, ownership, or lessee without Board approval; the above conditions appear on the certificate of occupancy; the expiration date of the variance be indicated on the certificate of occupancy; the approval is 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 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 21, 2011, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years, to expire on March 6, 2021 and extend the time to obtain a certificate of occupancy to June 21, 2012, on condition that the term of the grant expire on March 6, 2021; all signage at the site comply with C1 district regulations; the above conditions be reflected on the certificate of occupancy; a new certificate of occupancy be obtained by June 21, 2012; all conditions from prior

resolutions not specifically waived by the Board remain in effect; and the Department of Buildings ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension. The applicant represents that the proposed extension of term of the Premises would have no impact on the character of the area in which it is located, as the facility has operated well in this location for approximately 65 years. The applicant contends that the use at the subject site has had no interference with other properties in the neighborhood, as the operator is on the property during the day to supervise the business and to care for the property as well as the concerns of the neighbors. Furthermore, the applicant states that the character of the surrounding neighborhood is matured, established and active location with many diverse commercial uses supporting the community at large and presents New Utrecht Avenue as a busy corridor having both heavy vehicular traffic at street level and an elevated New York City Transit Authority train line running overhead. In support of this contention, the applicant submitted photographs of the site and surrounding area. The applicant further states that there are no proposed changes in this instant application.

Over the course of hearings, the Board expressed concerns about maintenance at the site, specifically the inactive curb cut located along New Utrecht Avenue closest to Ovington Avenue and directed the applicant to restore the curb cut and sidewalks at the site; vehicle circulation and use of the canopy area; and operation and location of vacuum cleaners. In response to the comments regarding the inactive curb cut, the applicant submitted a contractor's letter proposing removal of one existing curb cut along New Utrecht Avenue, which the applicant attested has since been removed and a new curb and concrete sidewalk replacement installed along 15th Avenue. Additionally, the applicant submitted an updated proposed plan and photographs and a maneuverability study demonstrating vehicle circulation with the changes to the curb cut along New Utrecht Avenue near Ovington Avenue and the concrete sidewalk replacement along 15th Avenue and the location of the machinery attached to the vacuum cleaners located on the interior of the building within the compressor room.

Based upon its review of the record, the Board has determined that the extension of term of the variance with noted modifications to the previously approved plans 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 6, 1956, as amended through June 21, 2011, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years from the date of expiration of the prior grant, to expire on March 6, 2041, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked

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'Board Approved: December 5, 2022 – Six (6) sheets'; and on further condition;

THAT the term of the grant shall be for 20 years, to expire on March 6, 2041;

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

THAT the hours of operation for the automobile vacuums shall be limited from 9:00 a.m. to 7:00 p.m.;

THAT there shall be no parking of automobiles on the sidewalk at any time;

THAT there shall be no outdoor automobile repair done on the Premises;

THAT the Premises shall remain graffiti free at all times;

THAT there shall be no change in use, ownership, or lessee without prior Board 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. 1069-27-BZ'), shall be obtained within two years, by December 5, 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, December 5, 2022.

201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application January 5, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking which expired on August 15, 2021; Waiver of the Board's Rules of Practice and Procedures. R3-2/C2-3 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, Block 11712, Lot 28, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

Adopted by the Board of Standards and Appeals, December 5, 2022.

197-05-BZVI

APPLICANT – Law Office of Jay Goldstein, for 813 & 815 Broadway LLC, owner.

SUBJECT – Application August 8, 2022 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial which expires on April 29, 2022; Extension of Time to Obtain a Certificate of Occupancy; Amendment of the Board's condition that no further extension be considered; Waiver of the Board's Rules. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, Block 563, Lot 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures ("the Board's Rules"); an extension of time to complete construction pursuant to a variance previously granted by the Board, under Z.R. § 72-21, which permitted the construction of an 11-story mixed-use commercial and residential building with waivers for floor area ratio ("FAR"), open space ratio ("OSR"), height, setback, and dwelling count, contrary to Z.R. §§ 23-142, 33-432, and 23-22, and expired on April 29, 2022; and an amendment to the conditions of the previously granted variance.

A public hearing was held on this application on November 14, 2022, after due notice by publication in *The City Record*, and then to decision on December 5, 2022. Commissioner Ottley-Brown, Commissioner Scibetta, and Commissioner Yoon performed inspections of the Premises and the surrounding neighborhood. Community Board 2, Manhattan recommends disapproval of this application, stating, in part:

3. Whereas, the applicant claims ownership has faced further delays due to the Covid Pandemic.

4. Despite Covid restrictions for construction being lifted in June 2020, the applicant has not started any construction activity nor filed building permits for this project to date, the reasoning that the Covid pandemic delayed him seeming specious.

5. In addition, Village Preservation shared new testimony regarding the deep importance of said site to the history of New York City and Greenwich Village and other recent

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developments that impact the neighborhood.

6. This neighborhood has undergone significant development in the preceding 15 years.

The Premises are located on the west side of Broadway, between East 11th Street and East 12th Street, within a C6-1 zoning district, in Manhattan. With approximately 50 feet of frontage along Broadway, 100 feet of depth, and 5,026 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over the Premises since July 1, 2008, when the Board, under the subject calendar number, granted a variance, pursuant to Z.R. § 72-21, to permit, within a C6-1 zoning district, the proposed development of an 11-story mixed-use commercial and residential building, contrary to zoning regulations for FAR, open space ratio (Z.R. § 23-142), height, setback (Z.R. § 33-432), and dwelling count (Z.R. § 23-22), on condition that all work substantially conform to drawings as they apply to the objections noted and filed with the application; the total FAR of the development be limited to 6.0, with a residential FAR of 5.6 and a commercial FAR of 0.4; the street wall of the building be limited to a height of 129'-8" and the open space is limited to a minimum of 2,022 square feet (seven percent open space ratio); other bulk parameters of the building be as indicated on the BSA-approved plans; the interior layout and all exiting requirements be as reviewed and approved by the Department of Buildings; this 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.

On January 12, 2010, the Board, under the subject calendar number, amended the resolution to permit the addition of a second elevator, a sub-cellar, and other related plan changes on condition that all work substantially conform to drawings filed with the application; the residential FAR be limited to 5.6 and the commercial FAR be limited to 0.4; the use of the cellar be strictly limited to accessory storage associated with the first floor Use Group ("UG") 6 use; the cellar not be generally accessible from the UG 6 use except for storage purposes; 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 configurations not related to the relief granted.

On April 29, 2014, the Board, under the subject calendar number, waived its Rules of Practice and Procedures and granted an extension of time to complete

construction on condition that the use and operation of the site comply with BSA-approved plans; substantial construction be completed within four years, by April 29, 2018; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plan be considered approved only for the portions related to the specific relief granted; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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 configurations not related to the relief granted.

On October 30, 2018, the Board, under the subject calendar number, granted an extension of time to complete construction and amended the resolution to permit a 2-foot-by-28-foot extension at the rear of the building on condition that any and all work substantially conform to drawings as filed with the application; the total FAR of the development be limited to 6.0, with a maximum residential FAR of 5.6 and a maximum commercial FAR of 0.4; there be no change to the sellable floor area or FAR previously approved by the Board, as indicated on BSA-approved plans; substantial construction be completed by April 29, 2022; the use of the cellar be strictly limited to accessory storage associated with the first floor UG 6 use; the cellar not be generally accessible from the UG 6 use except for storage purposes; no further extensions of time to complete construction of the subject development be granted by the Board; the above conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained within four years, by October 30, 2022; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; 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 configurations not related to the relief granted.

By letter dated July 25, 2022, the Board stated that it had no objections to the transfer of the DOB application associated with the subject calendar number, # 104072076, to a new DOB application number, # 121209165, on condition that the Department of Buildings ensure that any proposed changes or development on the Premises comply with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

The time to complete construction under the variance having expired, the applicant now seeks a four year extension of time to complete construction, and an amendment to eliminate the condition of the resolution requiring that no further extensions of time to complete construction of the subject development be granted by the Board. Because this application was filed less than two

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years after the expiration of the previous grant, the applicant requests a waiver, pursuant to § 1-14.2 of 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 changes to the BSA-approved plans are contemplated by this application and that the delay in completion of the development was a result of the effects of the COVID-19 pandemic. Specifically, the applicant represents that, since the October 30, 2018 grant permitting an extension of time to complete construction, the applicant faced delays in pursuing the project due to the global pandemic and the resulting financial issues. Moreover, the applicant states that it has filed plans and is prepared to pull a permit to commence demolition and construction pending the Board's approval of the instant application. Furthermore, the applicant states that area conditions have not changed and submits that the proposed project remains appropriate for the area. Finally, the applicant represents that, as funding for the project is in place, it does not foresee any further delays.

At hearing, the Board requested that the applicant elaborate on the status of the DOB permitting process for the proposed project and explain how the status of DOB permitting would affect the proposed construction timeline. In response, the applicant submitted a construction timeline representing that it had filed an application for a demolition permit with DOB and planned to file applications for new building permits with DOB pending the Board's approval of the instant application.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 1, 2008, so that as amended this portion of the resolution shall read: "to extend the time to complete construction for four years from the expiration of the prior grant, to expire on April 29, 2026, *on condition*:

THAT substantial construction shall be completed by April 29, 2026;

THAT the total FAR of the development shall be limited to 6.0,

with a maximum residential FAR of 5.6 and a maximum commercial FAR of 0.4;

THAT there shall be no change to the sellable floor area or FAR previously approved by the Board, as indicated on the BSA-approved plans;

THAT the use of the cellar shall be strictly limited to accessory storage associated with the first floor Use Group 6 use;

THAT the cellar shall not be generally accessible from the Use Group 6 use except for storage purposes;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 197-05-BZ"), shall be obtained within four years, by December 5, 2026;

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

THAT the approved drawings 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/configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 5, 2022.

CORRECTION: This resolution, adopted on December 5, 2022, under Calendar No. 112-11-BZII, is hereby corrected to read as follows:

112-11-BZII

APPLICANT – Belkin Burden Goldman, LLP, for Tom Petrosino, owner.

SUBJECT – Application February 17, 2022–Extension of Term of a previously approved Variance (§72-21) permitting the operation of a scrap metal yard (UG 18) which expires on June 5, 2022. C8-1 zoning district.

PREMISES AFFECTED – 2994 Cropsy Avenue, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance previously granted by the Board, under Z.R. § 72-21, which permitted the operation of a Use Group ("UG") 18 scrap metal yard in a C8-1 zoning district, contrary to Z.R. § 32-10, and expired on June 5, 2022.

A public hearing was held on this application on October 17, 2022, after due notice by publication in *The City Record*, and then to decision on December 5, 2022. Commissioner Scibetta and Commissioner Yoon performed inspections of the Premises and the surrounding neighborhood. Community Board 13, Brooklyn, recommends approval of this application.

The Premises are a corner lot bound by Cropsy Avenue to the east, Bay 54th Street to the north, and Coney Island Creek to the south, within a C8-1 zoning district, in Brooklyn. With approximately 220 feet of frontage along Cropsy Avenue, 137 feet of frontage along South Conduit Avenue, 222 feet of frontage along Coney Island Creek, and 34,828 square feet of lot area, the Premises are occupied by a UG 18 scrap metal yard comprised of an office with attached trailer, one-story warehouse building with

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mezzanine, machine room with attached generator and steel cutting machine, truck scale, guard house, and six parking spaces.

The Board has exercised jurisdiction over the Premises since March 2, 1965, when, under BSA Cal. No. 1069-64-BZ, the Board granted a variance, in an R-4 zoning district, and for a term of ten years, to expire on March 2, 1975, to permit the operation of a UG 18 scrap metal yard and the erection of a one-story building for the storage of scrap metal and office, on condition that the work be done in accordance with the BSA-approved plans; all laws, rules and regulations applicable be complied with; and permit be obtained, work done, and certificate of occupancy obtained within one year, by March 2, 1966.

On July 8, 1975, the Board, under BSA Cal. No. 1069-64-BZ, waived its Rules of Practice and Procedures and extended the term of the variance for five years, to expire on July 8, 1980, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained.

On December 2, 1980, the Board, under BSA Cal. No. 703-80-BZ, extended the term of the variance for ten years, to expire on December 2, 1990, and amended the resolution to permit the enlargement in floor area of an existing scrap metal storage establishment, on condition that work substantially conform to the BSA-approved plans; the variance be limited to a term of ten years, to expire on December 2, 1990; the hours of operation be restricted to 7:00 a.m. to 6:00 p.m. Monday through Saturday, closed on Sunday; all crane operations be performed between 10:00 a.m. and 3:00 p.m. and comply with the performance standards for vibration and sound in an M1 district; a minimum 8-foot-high, 100-percent-opaque fence be installed; no metal scraps be stored above the fence height; the use be restricted to a metal and battery recycling establishment; signs comply with the C1 district regulations; all vehicles accessory to the use be parked within the property lines; the surrounding sidewalk area be maintained clean; a rodent control program be maintained on a continual basis; all batteries be stored free of any acid; there be no burning in the operations; all laws, rules and regulations applicable be complied with; and substantial construction be completed in accordance with the Zoning Resolution.

On January 22, 1991, the Board, under BSA Cal. No. 703-80-BZ, extended the term of the variance for ten years, to expire on December 2000, and further amended the resolution to permit modifications to the Premises, on condition that a new three-foot minimum width sidewalk ribbon and curb be installed along Bay 45th Street; the Premises conform with the BSA-approved plans; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by January 22, 1992.

On September 22, 1992, the Board, under BSA Cal. No. 703-80-BZ, waived its Rules of Practice and Procedures and extended the time to complete construction, on condition that substantial construction be completed within

two years from January 22, 1992, by January 22, 1994.

On May 10, 1994, the Board, under BSA Cal. No. 703-80-BZ, extended the time to complete construction, on condition that substantial construction be completed within 28 months from January 22, 1994, by May 22, 1997.

On July 25, 2000, the Board, under BSA Cal. No. 703-80-BZ, extended the term of the variance for ten years, to expire on December 2, 2010, on condition that the Premises be maintained in substantial compliance with the BSA-approved plans; the term of the grant be limited to ten years from the date of expiration of the prior grant, to expire on December 2, 2010; the crane operation be limited to 8:00 a.m. to 4:30 p.m., Monday through Saturday; the above conditions appear on the certificate of occupancy; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by July 25, 2001.

On June 5, 2012, the Board, under the subject calendar number, granted a variance to permit, in a C8-1 zoning district, and for a term of ten years, to expire on June 5, 2022, the enlargement of the zoning lot and the legalization of an enlargement to the one-story warehouse building on the site, which did not conform to district use regulations, contrary to Z.R. § 32-10, on condition that any and all work substantially conform to the BSA-approved plans; the term of the grant expire on June 5, 2022; the site be maintained free of debris and graffiti; the scrap metal piles be maintained so as not to exceed the height of the fence; the hours of operation be limited to Monday through Friday, from 7:00 a.m. to 5:00 p.m., Saturday from 7:00 a.m. to 3:00 p.m., and closed on Sunday; the hours of crane operation be limited to Monday through Friday, from 8:00 a.m. to 4:30 p.m. and Saturday, from 8:00 a.m. to 3:00 p.m.; the crane be operated in conformance with Reference Standard RS 19-2; a rodent control plan certified by a registered New York State exterminator be kept in effect at the site; all vehicles be parked within the fenced-in portion of the site; all vibrations and sounds emitted from the site comply with M-1 district regulations; signage be as indicated on the BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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 term of the variance having expired, the applicant now seeks an extension of term. This instant application does not request any changes to the use or bulk at the subject site in this instant application. The applicant asserts that the site has been operated in conformance with the conditions of the prior grants. Furthermore, the applicant states that it maintains employees at the entrance of the Premises at all times that the business is in operation to direct traffic in and out of the Premises and that the

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neighboring property's 12-foot-tall buffer comprising a double row of trees planted in ground along the property line of the Premises shield the subject site from the view of single-family homes located nearby on Bay 53rd Street.

At hearing, the Board directed the applicant to explain whether the sign which wraps around the office building on the northeastern corner of the Premises complies with signage regulations and raised concerns about graffiti at the site. In response to the issues regarding signage, the applicant submitted a revised signage analysis chart and zoning analysis sheet indicating that all signage at the site complies with applicable signage regulations.

In response to the concerns regarding graffiti, the applicant painted over the graffiti at the site and submitted photographs depicting the removal of graffiti from the site. Furthermore, the applicant submitted an operational plan for future graffiti removal at the site committing to the following:

The Coney Island Creek side of the property is less visible and is often overlooked. To combat this, we shall be conducting weekly visual permit inspections to make sure the graffiti is not overlooked in the future. We believe this periodic inspection addresses the Board's concerns raised at hearing.

Based upon its review of the record, the Board has determined that the extension of term of the variance 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 2, 1965, as amended through June 5, 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 June 5, 2032, *on condition*:

THAT the grant shall be for a term of ten years, to expire on June 5, 2032;

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

THAT the scrap metal piles shall be maintained so as not to exceed the height of the fence along Cropsey Avenue;

THAT the hours of operation shall be limited to Monday through Friday, from 7:00 a.m. to 5:00 p.m., Saturday from 7:00 a.m. to 3:00 p.m., and closed on Sunday;

THAT the hours of crane operation shall be limited to Monday through Friday, from 8:00 a.m. to 4:30 p.m. and Saturday, from 8:00 a.m. to 3:00 p.m.;

THAT the crane shall be operated in conformance with Reference Standard RS 19-2;

THAT a rodent control plan certified by a registered New York State exterminator shall be kept in effect at the site;

THAT all vehicles shall be parked within the fenced-in portion of the site;

THAT all vibrations and sounds emitted from the site shall comply with M-1 district regulations;

THAT signage shall be as indicated on the BSA-approved plans;

THAT a rodent control plan certified by a registered New York State exterminator shall be kept in effect 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. 112-11-BZ'), shall be obtained within two years, by December 5, 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, December 5, 2022.

127-15-BZ

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

SUBJECT – Application May 22, 2020 – 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

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, December 5, 2022.

2017-304-BZII

APPLICANT – Barbara Resnicow, for La Mirada-Schippers LLC, owner; Brooklyn Prospect Charter School, lessee.

SUBJECT – Application June 9, 2022 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-19) permitting the development of a school which expired on August 20, 2022. M1-2D zoning district.

PREMISES AFFECTED – 156-160 17th Street, Block 630, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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Affirmative: Chair Chanda, Vice-Chair Scibetta, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Yoon.....5
Negative:.....0
THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a special permit previously granted by the Board, under Z.R. §§ 73-19 and 73-03, which permitted the operation of a Use Group (“UG”) 3A school in an M1-2D zoning district, contrary to Z.R. § 42-00, and expired on August 20, 2022.

A public hearing was held on this application on October 17, 2022, after due notice by publication in *The City Record*, and then to decision on December 5, 2022. Commissioner Scibetta and Commissioner Yoon performed inspections of the Premises and the surrounding neighborhood.

The Premises are located on the south side of 17th Street, between 3rd Avenue and 4th Avenue, within an M1-2D zoning district, in Brooklyn. With approximately 60 feet of frontage along 17th Street, an irregular depth ranging from 100 feet to 124 feet, and 6,932 square feet of lot area, the Premises are occupied by an unfinished UG 3A school.

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. §§ 73-19 and 73-03, to permit the operation of a UG 3A school within an M1-2D zoning district, on condition that all work, site conditions and operation conform to the BSA-approved plans; an (E) designation (E-495) be placed on the site to ensure proper hazardous materials remediation; there be no lighting or amplified sound permitted on the roof or on the third-floor terrace; the applicant apply directly to the Department of Buildings and the Fire Department to consider the elimination of one of the fire egress routes that would allow the combination of, in the event of an emergency, the egress through one of those routes by the ambulance corps; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by August 21, 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 drawings 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 drawings or configurations not related to the relief granted.

The time to complete construction and obtain a certificate of occupancy having expired, the applicant now seeks an extension. The applicant represents that it has not completed construction due to complications with obtaining financing; completing excavation, structural work, and remediation; and overcoming cost escalations and supply chain shortages. However, the applicant states that it does not anticipate further significant budget overruns and related

delays and represents that, with foundations now in place, construction is on pace for substantial completion by April or May 2023. In support of this claim, the applicant submitted a construction timeline, stating that it anticipated obtaining its temporary certificate of occupancy by May 2024.

Based upon its review of the record, the Board has determined that the extension of time to complete construction and 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, dated August 21, 2018, so that as amended this portion of the resolution shall read: “to extend the time to complete construction and obtain a certificate of occupancy for two years, to expire on December 5, 2024, *on condition*:

THAT an (E) designation (E-495) shall be placed on the site to ensure proper hazardous materials remediation;

THAT there shall be no lighting or amplified sound permitted on the roof or on the third-floor terrace;

THAT the applicant shall apply to the Department of Buildings and Fire Department to consider the elimination of one of the fire egress routes that would allow the combination of, in the event of an emergency, the egress through one of those routes by the ambulance corps;

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. 2017-304-BZ’), shall be obtained within two years, by December 5, 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, December 5, 2022.

2019-58-BZII

APPLICANT – Law Office of Jay Goldstein, for JSB Reaky No. 2, LLC, owner; CEC Entertainment, LLC d/b/a Chuck E. Cheese, lessee.

SUBJECT – Application April 5, 2022 – Extension of Term of a previously approved Special Permit (§73-244) permitting the operation of an Eating and Drinking Establishment with entertainment and a capacity of more than 200 persons (UG 12A) (Chuck E. Cheese’s) which expires on July 23, 2022. R4/C2-2 zoning district.

PREMISES AFFECTED – 133-35 79th Street, Block 11359, Lot 1, Borough of Queens.

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COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term, pursuant to Z.R. §§ 72-01 and 72-22, of a special permit previously granted by the Board, under Z.R. §§ 73-03 and 73-244, which permitted the operation of a Use Group (“UG”) 12A eating or drinking establishment with entertainment and a capacity of more than 200 persons in a C2-2 (R4) zoning district, contrary to Z.R. § 32-21, and expired on July 23, 2022.

A public hearing was held on this application on October 3, 2022, after due notice by publication in *The City Record*, and then to decision on December 5, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta, and Commissioner Yoon performed inspections of the Premises and the surrounding neighborhood. Community Board 10, Queens, recommended approval of this application.

The Premises are bound by 79th Street to the west, South Conduit Avenue to the north and west, and Linden Boulevard to the south, within a C2-2 (R4) zoning district, in Queens. With approximately 764 feet of frontage along 79th Street, 423 feet of frontage along South Conduit Avenue, 60 feet of frontage along Linden Boulevard, and 77,132 square feet of lot area, the Premises are occupied by a two-story commercial building and two one-story commercial buildings, one of which constitutes the subject UG 12A eating or drinking establishment with entertainment and a capacity of more than 200 persons.

The Board has exercised jurisdiction over the Premises since July 23, 2019, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-244 and 73-03, to permit, within a C2-2 (R4) zoning district and for a term of three years, to expire on July 23, 2022, the operation of a UG 12A eating or drinking establishment with entertainment and a capacity of more than 200 persons, on condition that the term of the grant be for three years, expiring July 23, 2022; the above condition appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar number, be obtained within three years, by July 23, 2022; substantial construction be completed in accordance with Z.R. § 73-70, by July 23, 2023; 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 the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configurations not related to the relief

granted.

The term of the special permit having expired, the applicant now seeks an extension of term. The applicant represents that although construction of the subject Premises was delayed due to the COVID-19 pandemic, it has since completed construction and began operations on January 31, 2022. The applicant describes that the building housing the establishment is entirely enclosed, and the active entertainment area may only be reached from within the establishment, and there are no convenience entrances to any other establishments inside the Space. The applicant represents that the primary clientele are children 12 years and under, accompanied by their parents, and as such the active entertainment spaces are an essential part of the establishment. Furthermore, the applicant contends that the main entrance is attended by staff, who ensure that admission is conducted in an orderly fashion. The applicant further states that the hours of operation are Sunday through Thursday, 9 a.m. to 9 p.m., and Friday and Saturday, 9 a.m. to 10 p.m., with Monday through Thursday being typically viewed as “off-peak” hours. The applicant claims that the site has approximately 5-30 patrons during the day, and approximately 100 patrons at night, with the peak hours on Friday from 5 p.m. – 9 p.m., Saturday from 12 p.m. – 9 p.m., and Sunday from 1 p.m. – 9 p.m., with an average of 300-400 patrons at a time, and during both peak and off-peak intervals, all patrons arrive by car, with multiple patrons typically arriving in the same vehicle. Moreover, the applicant asserts that 12 employees are present in the Space during both peak and off-peak intervals. Additionally, the applicant maintains that trash is removed four times a week. The applicant also represents that the conditions at the Premises still warrant the original grant of the special permit under §§ 73-03 and 73-244 and does not request any changes to the subject site in the instant application.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 23, 2019, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for three years, to expire on December 5, 2025, *on condition*:

THAT the grant shall be for a term of three years, to expire on December 5, 2025;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (‘BSA Cal. No. 2019-58-BZ’), shall be obtained within one year, by December 5, 2023;

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

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

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, December 5, 2022.

319-53-BZIII

APPLICANT – William Consuegra by Majed ElJamal, for 222nd Street Realty, owner.

SUBJECT – Application August 23, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Repair Facility (UG 16B) which expired on January 31, 2021, Waiver of the Board’s Rules of Practice and Procedures. Amendment for the parking spaces. R5 zoning district.

PREMISES AFFECTED – 1135 East 222nd Street aka 3651 Eastchester Road, Block 4900, Lot 2, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for postponed hearing.

167-55-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for The Gargano Family Limited Partnership, owner; GSA Petroleum, lessee.

SUBJECT – Application December 1, 2022 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 7, 2015; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Board’s Rules of Practice of Procedures. R3-1 zoning district.

PREMISES AFFECTED – 20-65 Clintonville Street, Block 4752, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for adjourned hearing.

295-57-BZIII

APPLICANT – Jung H. Choi, for Aronoff Limited Partnership, owner.

SUBJECT – Application August 17, 2021 – Extension of Term (§11-411) for the continued operation of an Automotive Service Station (UG 16B) which expired on August 7, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, Block 6672, Lot 80, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for postponed hearing.

519-57-BZIII

APPLICANT – Vassalotti Associates Architects, LLP, for BP Products North America, Inc., owner.

SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board’s Rules of Practice and Procedures. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for decision, hearing closed.

584-82-BZ

APPLICANT – Sheldon Lobel, P.C., for 64th Street Third Avenue Associates, LLC, owner.

SUBJECT – Application August 15, 2020 – Amendment of a previously approved Variance (§72-21) permitting the construction of a required plaza at a height in excess of 5 feet above the curb level. The seeks modifications to the layout of a Privately Owned Public Space (“POPS”). R8B and C1-9 zoning districts.

PREMISES AFFECTED – 200 East 64th Street, Block 1418, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for decision, hearing closed

182-85-BZIII

APPLICANT – Eric Palatnik, P.C., for 209-11 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the enlargement of a contractor’s establishment (UG 16) which expired on August 22, 2021. R6B zoning district.

PREMISES AFFECTED – 209-11 20th Street, Block 637, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to March 27-28, 2023, at 10 A.M., for adjourned hearing.

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183-85-BZIII

APPLICANT – Eric Palatnik, P.C., for 206 20th Street LLC, owner.

SUBJECT – Application September 22, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) permitting the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom which expired on September 19, 2021. R6B zoning district.

PREMISES AFFECTED – 206/8 20th Street, Block 640, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to March 27-28, 2023, at 10 A.M., for adjourned hearing.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 14-15, 2023, at 10 A.M., for deferred decision.

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for 1108 Allerton Avenue, LLC, owner.

SUBJECT – Application December 13, 2021 – Extension of term and Waiver for a previously granted Variance (§72-21) permitting the operation of an existing food products manufacturing establishment (Use Group 17B) which expired on July 1, 2017; Amendment to permit modifications to a portion of the site; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 1108 Allerton Avenue, Block 4456, Lot 47, Borough of Bronx.

COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M., for decision, hearing closed.

129-97-BZII

APPLICANT – Gerald J. Caliendo, RA, AIA, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application November 8, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on November 4, 2018; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-65 Cross Island Parkway, Block 4697, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for adjourned hearing.

160-08-BZ

APPLICANT – Rothkrug Rothkrug Spector LLP, for HJC Holding Corp., owner.

SUBJECT – Application October 14, 2022 – Application for re-argument of an application dismissed on April 11, 2022, under Board’s Rules of Practice and Procedure Section 1-12.4. R4-A Zoning District R4.

PREMISES AFFECTED – 651-671 Fountain Avenue, block bounded by Fountain Avenue, Stanley Avenue, Euclid Avenue, Wortman Avenue. Block 4527, Lot full block. Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

72-11-BZIII

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.

SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

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303-12-BZIII

APPLICANT – Eric Palatnik, P.C., for Top Development Corporation, owner.

SUBJECT – Application June 6, 2022 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a three-story community facility (house of worship UG 4) which expired on May 6, 2022. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for decision, hearing closed.

2017-232-AII

APPLICANT – Robert M. Scarano Jr. for Neil Simon of SHS Richmond Terrace LLC, owner.

SUBJECT – Application September 2, 2022 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved General City Law §36 waiver permitting the development of a retail public self-storage building not fronting on a legally mapped street which expired on July 17, 2022; Waiver of the Board’s Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

2017-306-BZIII

APPLICANT – Law Office of Lyra J. Altman, for Stella Alfaks and Devi Alfaks, owners.

SUBJECT – Application August 3, 2021 – Amendment of a previously approved Special Permit (§73-622) permitting the enlargement of the existing single family home contrary to ZR §23-47 (rear yard). R5 zoning district.

PREMISES AFFECTED – 1977 East 14th Street, Block 7293, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 6-7, 2023, at 10 A.M. for continued hearing.

APPEALS CALENDAR

2021-2-A thru 2021-7-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 99-21 Hollis Avenue LLC, lessee.

SUBJECT – Application January 13, 2021 – Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 99-21 Hollis Avenue aka 191-01/191-09/191-13/192-01/192-05/192-13 Hollis Avenue, Block 10839, Lot (s) 1, 50, 49, 48, 47, 46, Borough of Queens.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Chanda, Vice-Chair Scibetta, Commissioner Ottley-Brown and Commissioner Sheta...4
Negative:.....0
Abstain: Commissioner Yoon.....1

THE RESOLUTION –

The decision of the Department of Buildings, dated December 15, 2020, acting on New Building Application Nos. 440654597, 440654481, 440654418, 440654141, 440654098, and 440653179 reads, in pertinent part: “1. The proposed N.B. construction is located within the bed of a mapped street contrary to section 35 of the General City Law therefore, approval from the Board of Standards and Appeals is required”.

This is an application under General City Law (“GCL”) § 35 to permit, partially within an R3X zoning district and partially within a C2-1 (R3-2) zoning district, the construction of six two-story, two-family residences located partially within the bed of a mapped street.

A public hearing was held on this application on March 29, 2022, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2022, and then to decision on December 6, 2022.

The Premises are located on the north side of Hollis Avenue, between 99th Avenue and 100th Avenue, partially within an R3X zoning district and partially within a C2-1 (R3-2) zoning district, in Queens. With approximately 307 feet of frontage along Hollis Avenue, 240 feet of depth, and 24,895 square feet of lot area, the Premises are occupied by a two-story, plus attic, residence.

The applicant proposes to demolish the existing two-story residence and construct six new two-story, plus cellar, two-family residences, by apportioning the existing tax lot 1 into six new tax lots, tentative lots 1, 46, 47, 48, 49, and 50. The applicant represents that each building would be located on a separate zoning and tax lot and each residence would conform and comply to all pertinent use and bulk requirements for the subject zoning lot. The applicant states that tentative lot 1 would be addressed 191-01 Hollis Avenue and would have a floor area of 3264.36 square feet (0.55 FAR); tentative lot 46 would be addressed 192-12 Hollis Avenue and would have a floor area of 2,075.62

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square feet (0.57 FAR); tentative lot 47 would be addressed 192-05 Hollis Avenue and would have a floor area of 2,198.27 square feet (0.60 FAR); tentative lot 48 would be addressed 192-01 Hollis Avenue and would have a floor area of 2,183.21 square feet (0.55 FAR); tentative lot 49 would be addressed 191-13 Hollis Avenue and would have a floor area of 2,198.21 square feet (0.55 FAR); and tentative lot 50 would be addressed 191-09 Hollis Avenue and would have a floor area of 3264.36 square feet (0.55 FAR). The applicant also represents that two accessory parking spaces would be provided for each residence.

The applicant requests the GCL § 35 waivers as the proposed development would be located partially within a mapped but unbuilt portion of Hollis Avenue, an existing two-way street on the official City map that is currently paved and improved to the southwest of the subject Premises. The applicant represents that a mapped but unbuilt portion of Hollis Avenue extends into the privately owned portion of the subject site, varying between approximately 10 to 15 feet. The applicant states that the City has never taken any action toward the acquisition of the privately owned property and declares that there is no reasonable possibility that any City agency would have interest in developing this portion of the street as any development between 99th Avenue and 100th Avenue would necessitate condemnation and development of existing buildings on lots 14 and 19 with the subject block.

By correspondence dated October 6, 2022, the NYC Department of Transportation (“DOT”) states that according to the Queens Borough President’s Topographical Bureau, Hollis Avenue between 99th Avenue and 100th Avenue is mapped at a width of 8 feet and is dedicated to public use by Corporation Counsel of Opinion (“CCO”) for approximate 50 feet as-in-use, dated September 28, 1914. The City does not have title to the remaining portion of this street. DOT has reviewed the pertinent materials and have the following comments:

1. Please clearly identify the open space in front of the proposed homes on the site plan. Please note that parking in spaces designated to be front patios is prohibited and presents significant safety concerns for people walking along the sidewalk. Therefore, DOT recommends these areas be identified as being landscaped or fenced to prevent any illegal parking in this area.
2. Please revise the curb cut for proposed Lot 48 to be properly aligned with the proposed driveway. The proposed curb cut for this lot is shown to be offset from the driveway on the Proposed Plot Plan, the Site Plan for Lot 48 and several BSA application documents. Curb cuts are required to be coincident with the associated driveway.
3. Please install the proposed sidewalk against the property line to create more room for an American Disabilities Act (“ADA”) compliant sidewalk and for the proposed tree pits.

4. Please note that the DOB requires half the width of the roadway, plus an addition five feet to be repaved and the markings to be reinstalled. This requirement will also be addressed during DOB’s Builder’s Pavement Plan (“BPP”) process.

By correspondence dated December 6, 2022, DOT states that it reviews applications and provides comments deemed relevant on the basis of pedestrian and traffic safety. Given that this application requires BPP approval from DOB and DOT, DOT does not have any additional comments at this time.

By correspondence dated July 18, 2022, the Fire Department, Bureau of Operations and Fire Prevention states it has “No Objection” to the application.

By letter dated July 7, 2022, the New York City Department of Environmental Protection (“DEP”) states there is an existing 8" diameter (dia.) sanitary sewer and an existing 6" dia. water main in the bed of Hollis Avenue between 99th Avenue and 100th Avenue. The Amended Drainage Plan South Queens, Part 2, Sheet 2 of 4, for the above referenced location, dated April 11, 2009, shows 10" dia. sanitary sewer and 15/30" dia. storm sewer in Hollis Avenue between 99th Avenue and 100th Avenue. The applicant has submitted a Proposed Master Plot Plan, dated June 16, 2022, which shows the 80' width of the mapped Hollis Avenue, from which 58.59' (at the narrowest point) will be available for installation, maintenance and /or reconstruction of the future and existing sewers and water main. Based on the above, DEP has no objections to the proposed application for GCL § 35 waiver.

Over the course of hearings, the Board requested that the applicant respond to DEP’s concerns to depict on its plan the width of the mapped Hollis Avenue and the width of the widening portions of the street; proposed six lots; an 8" dia. sanitary sewer and a 6" dia. water main in the bed of Hollis Avenue; and distances from the lot line of the existing lot 1 to the sewer and water main. Furthermore, the Board requested that the applicant revise its plans to also respond to DOT’s comments and clarify the location of lot 1 and the zoning district boundary and applicable zoning regulations.

In response to DEP’s concerns, the applicant submitted a revised plan set which includes a) combined site plan showing all six proposed buildings; b) distances from lot lines to the mapped street line within the privately owned lot; c) distances from the lot lines to the water main within Hollis Avenue; d) distances from the lot lines to the sanitary sewer within Hollis Avenue; e) the mapped width of Hollis Avenue (80 feet); and f) north arrows on all pertinent plan sheets.

In response to DOT’s concerns, the applicant submitted a revised master site plan and corresponding change plan which clarified that 1) no parking is proposed in front of any proposed building; 2) the curb cut for Lot 48 adjusted to align with the driveway; 3) the sidewalk relocated to be adjacent to the lot line to facilitate installation of a code compliant sidewalk and tree pits; and

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4) the property owner will comply with all requirements for paving pursuant to an approved BPP, including repaving of Hollis Avenue to half its width plus five feet and reinstallation of any markings.

Additionally, the applicant states that the westernmost C2-1 (R3-2) zoning district extends to a maximum of 15 feet into the subject lot, with the remaining portions of the lot in the R3X district. The applicant notes that the permitted FAR for both R3X and R3-2 zoning districts is the same, and the proposed yards are compliant with pertinent district requirements: 0 feet as per Z.R. § 33-25 for the western side yard in the C2-1 (R3-2) zoning district, 8 feet as per Z.R. § 23-461 for the eastern side yard, and 10 feet as per Z.R. § 23-45 for the front yard in the R3X zoning district.

Accordingly, 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 December 15, 2020, acting on New Building Application Nos. 440654597, 440654481, 440654418, 440654141, 440654098, and 440653179, under the powers vested in the Board by Section 35 of the General City Law, to *permit* the construction of six two-story, two family residences located within the bed of a mapped street, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: December 6, 2022” — 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. Nos. 2021-2-A thru 2021-7-A”), shall be obtained within four years, by December 6, 2026;

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 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, December 6, 2022.

2022-4-BZY

APPLICANT – Sheldon Lobel, P.C., for President Sai, LLC, owner.

SUBJECT – Application January 18, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning M1-4/R6B zoning district.

PREMISES AFFECTED – 529 President Street, Block 441, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application, pursuant to Z.R. § 11-332, for an extension of time to complete construction of a Use Group (“UG”) 5 transient hotel and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 320862161-01-NB, prior to the effective date of an amendment to Z.R. § 42-11.

A public hearing was held on this application on October 17, 2022, after due notice by publication in *The City Record*, and then to decision on December 5, 2022. Commissioner Yoon performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the north side of President Street, in between Third Avenue and Fourth Avenue, partially within an M1-4 zoning district and partially within an M1-4 (R6B) zoning district, in Brooklyn. With approximately 164 feet of frontage along President Street, 95 feet of depth, and 15,564 square feet of lot area, the Premises are occupied by an unfinished five-story, UG 5 transient hotel.

I.

On April 28, 2017, DOB issued Permit No. 320862161-01-NB for the erection of a five-story, UG 5 transient hotel at the Premises (the “Permit”). The Permit has since been renewed 12 times, with the final renewal date on December 12, 2021, and the expiration date on October 28, 2022.

NYC City Council adopted the final M1 Hotel Text Amendment (“Amendment”) on December 20, 2018, which amended the Zoning Resolution to prohibit, pursuant to Z.R. § 42-111, UG 5 hotels in M1 zoning districts, except as permitted by a special permit issued by the City Planning Commission pursuant to Z.R. § 74-803 or as otherwise authorized by the Zoning Resolution.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement or extension of a transient hotel use

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requires a special permit pursuant to Z.R. § 74-803. The applicant represents that the subject development vested automatically under the special vesting provisions of Z.R. § 42-111(e), because a new building permit for the Development was lawfully issued on April 28, 2017, prior to April 23, 2018.

Additionally, pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under Z.R. §§ 11-332(a) and 42-111(e) to complete construction and obtain a certificate of occupancy for the subject project was December 20, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction. By letter dated September 7, 2022, DOB states that it conducted an audit of the subject project and, based upon such audit, confirms that the building permits authorizing work associated with the Permit were lawfully issued. Accordingly, the record reflects and the Board finds that the Permit was lawfully issued.

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 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).

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 states that, subsequent to the issuance of the Permit and as of the effective date of the Amendment as tolled by Subsequent Mayoral Emergency Executive Orders, it had completed piling, shoring, excavation, and 100% of the foundation, representing approximately 20% of the work required for the proposed building. In support of this contention, the applicant submitted financial information, including copies of invoices, canceled checks, a check register, photographs of the Premises, and a construction timeline representing that the pouring of the foundation commenced on January 1, 2021 and was completed on December 19, 2021, and documenting the costs incurred in furtherance of the applicant’s intended development. Accordingly, the record reflects and the Board finds that, in accordance with the building permits authorizing work associated with the Permit, the owner has effected substantial construction to further development of the building.

B.

Second, the applicant submitted evidence that substantial expenses have been paid or incurred as irrevocable financial commitments, totaling approximately \$2,310,346.02 since starting the project, \$1,525,866.68 (66%) of which was spent prior to the Amendment. The applicant represents that this amount was expended on preparing the Premises for construction, piling, shoring, excavating, pouring the foundation, installing plumbing, inspecting the Premises, and paying architectural, engineering, and surveying fees. In support, the applicant submitted an affidavit affirming the total expenditures on the project and financial information, including copies of invoices, canceled checks, a check register, and a cost

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breakdown documenting the costs incurred in furtherance of the applicant's intended development. Accordingly, the record reflects, and the Board finds that the owner has incurred substantial expenses to further development of the building.

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 Permit No. 320862161-01-NB.

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. 320862161-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring on December 20, 2023.

Adopted by the Board of Standards and Appeals, December 5, 2022.

2022-7-BZY

APPLICANT – Eric Palatnik, P.C., for St. Johns Real Estate Consultant, Inc., owner.

SUBJECT – Application January 19, 2022 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district.

PREMISES AFFECTED – 38-75 11th Street, Block 473, Lot 553, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application, pursuant to Z.R. § 11-332, for an extension of time to complete construction of a Use Group (“UG”) 5 transient hotel and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 320862161-01-NB, prior to the effective date of an amendment to Z.R. § 42-111.

A public hearing was held on this application on October 17, 2022, after due notice by publication in *The City Record*, and then to decision on December 5, 2022. Commissioner Yoon performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the north side of President Street, in between Third Avenue and Fourth Avenue, partially within an M1-4 zoning district and partially within an M1-4 (R6B) zoning district, in Brooklyn. With

approximately 164 feet of frontage along President Street, 95 feet of depth, and 15,564 square feet of lot area, the Premises are occupied by an unfinished five-story, UG 5 transient hotel.

I.

On April 28, 2017, DOB issued Permit No. 320862161-01-NB for the erection of a five-story, UG 5 transient hotel at the Premises (the “Permit”). The Permit has since been renewed 12 times, with the final renewal date on December 12, 2021, and the expiration date on October 28, 2022.

NYC City Council adopted the final M1 Hotel Text Amendment (“Amendment”) on December 20, 2018, which amended the Zoning Resolution to prohibit, pursuant to Z.R. § 42-111, UG 5 hotels in M1 zoning districts, except as permitted by a special permit issued by the City Planning Commission pursuant to Z.R. § 74-803 or as otherwise authorized by the Zoning Resolution.

On December 20, 2018, the NYC City Council passed the M1 Hotel Text Amendment that amended the Zoning Resolution to require City Planning Commission (“CPC”) approval for transient hotel use in M1 zoning districts. Pursuant to the amendment, development of a transient hotel use, change in use of an existing building to a transient hotel use, or enlargement or extension of a transient hotel use requires a special permit pursuant to Z.R. § 74-803. The applicant represents that the subject development vested automatically under the special vesting provisions of Z.R. § 42-111(e), because a new building permit for the Development was lawfully issued on April 28, 2017, prior to April 23, 2018.

Additionally, pursuant to Z.R. § 11-332(a), the applicant had two years from the effective date of the Amendment, i.e., until December 20, 2020, to complete construction and obtain a certificate of occupancy for the Development. Z.R. § 11-332(a) further provides that if construction has not been completed and a certificate of occupancy has not been granted prior to the two-year deadline, the Board may renew the building permit for up to two terms of not more than two years each, provided that the Board finds 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.”

Due to the COVID-19 pandemic, Mayoral Emergency Executive Order 144, issued on August 31, 2020, tolled the two-year deadline for a period of six months, through March 31, 2021. The tolling provision was extended by a series of subsequent Mayoral Emergency Executive Orders and was then amended by Mayoral Emergency Executive Order 205, issued on May 28, 2021, so that it applied “until the earlier of the expiration of the State of Emergency or August 31, 2021.” Thereafter, the tolling provision was extended through June 30, 2021. The tolling under Emergency Executive Order No. 205 ended on June 30, 2021, for a total tolling period of 303 days (August 31, 2020 to June 30, 2021), and the applicant represents that the deadline under

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Z.R. §§ 11-332(a) and 42-111(e) to complete construction and obtain a certificate of occupancy for the subject project was December 20, 2021.

To avoid the lapse of the permits, 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).

II.

Because the Permit lapsed on December 20, 2021, the applicant now seeks an extension of time to complete construction. By letter dated September 7, 2022, DOB states that it conducted an audit of the subject project and, based upon such audit, confirms that the building permits authorizing work associated with the Permit were lawfully issued. Accordingly, the record reflects and the Board finds that the Permit was lawfully issued.

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 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).

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 states that, subsequent to the issuance of the Permit and as of the effective date of the Amendment as tolled by Subsequent Mayoral Emergency Executive Orders, it had completed piling, shoring, excavation, and 100% of the foundation, representing approximately 20% of the work required for the proposed building. In support of this contention, the applicant submitted financial information,

including copies of invoices, canceled checks, a check register, photographs of the Premises, and a construction timeline representing that the pouring of the foundation commenced on January 1, 2021 and was completed on December 19, 2021, and documenting the costs incurred in furtherance of the applicant’s intended development. Accordingly, the record reflects and the Board finds that, in accordance with the building permits authorizing work associated with the Permit, the owner has effected substantial construction to further development of the building.

B.

Second, the applicant submitted evidence that substantial expenses have been paid or incurred as irrevocable financial commitments, totaling approximately \$2,310,346.02 since starting the project, \$1,525,866.68 (66%) of which was spent prior to the Amendment. The applicant represents that this amount was expended on preparing the Premises for construction, piling, shoring, excavating, pouring the foundation, installing plumbing, inspecting the Premises, and paying architectural, engineering, and surveying fees. In support, the applicant submitted an affidavit affirming the total expenditures on the project and financial information, including copies of invoices, canceled checks, a check register, and a cost breakdown documenting the costs incurred in furtherance of the applicant’s intended development. Accordingly, the record reflects, and the Board finds that the owner has incurred substantial expenses to further development of the building.

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 Permit No. 320862161-01-NB.

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. 320862161-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, for two years, expiring on December 20, 2023.

Adopted by the Board of Standards and Appeals,
December 5, 2022.

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2018-188-A & 2018-189-A

APPLICANT – Sheldon Lobel, P.C., for 3861 Realty LLC, owner.

SUBJECT – Application November 21, 2018 – Proposed construction of a two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district.

PREMISES AFFECTED – 194-28, 194-32 Dunton Avenue, Block 10509, Lot (s)160,61, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to February 27-28, 2023, at 10 A.M. for continued hearing.

2019-96-A thru 2019-155-A

APPLICANT – Rampulla Associates Architects, LLP, for ELOC FTK, LLC, owner.

SUBJECT – Application May 23, 2019 – To permit the construction of 48 two family and 5 single family homes not fronting on a mapped street contrary to General City Law §36. R3X Large Lot zoning district within the Special South Richmond District and Lower Density Growth Management District.

PREMISES AFFECTED – Bluebelt Loop, Cole Street, Block(s) 7558, 7564, 7566 & 7562, Lot (s) 53, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 111, 110, 109, 108, 107, 41, 106, 40, 105, 39, 104, 38, 103, 37, 102, 36, 101, 35, 100, 98, 99, 34, 97, 33, 96, 32, 95, 31, 94, 130, 193, 92, 91, 190, 25, 26, 23, 27, 22, 28, 21, 29, 20, 19, 18, 17, 16, 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M. for postponed hearing.

2020-91-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Maple Towers LLC, owner.

SUBJECT – Application December 16, 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 cellar and four-story, eight-family residential building prior to the adaption of a zoning text amendment on September 14, 1989 when the zoning was R6. R5 zoning district.

PREMISES AFFECTED – 109-52 54th Avenue, Block 2010, Lot 24, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to February 27-28, 2023, at 10 A.M. for adjourned hearing.

2022-62-A

APPLICANT – Carter Ledyard & Milburn LLP, for Onboard Hospitality LLC, owner.

SUBJECT – Application August 23, 2022– 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 zoning district. PREMISES AFFECTED – 34 West 38th Street, Block 839, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23-24, 2023, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

CORRECTION: This resolution adopted on December 5, 2022, under Calendar No. 2020-44-BZ, is hereby corrected to read as follows:

2020-44-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla City Holdings Corp., owner.

SUBJECT – Application May 22, 2020 – 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.

PREMISES AFFECTED – 2228 Gerritsen Avenue, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 22, 2020, acting on Alteration Type 1 Application No. 322083151, reads: “Proposed amendment to the automotive service is contrary to previous approval under BSA Cal. No. 360-01-BZ and must therefore be referred back to the Board of Standards and Appeals”.

This is an application under Z.R. §§ 73-211 and 73-03 to permit, in a C2-2 (R4) zoning district, the operation of an automotive service station (Use Group (“UG”) 16B) with accessory uses, contrary to Z.R. § 32-10.

A public hearing was held on this application on December 14, 2021, after due notice by publication in *The City Record*, with continued hearings on June 7, 2022 and

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October 18, 2022, and then to decision on December 5, 2022. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Scibetta, and Commissioner Yoon performed inspections of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are a through lot bounded by Gerritsen Avenue to the northeast, Avenue U to the north, Brigham Street to the west, and Knapp Street to east, within a C2-2 (R4) zoning district, in Brooklyn. With approximately 85 feet of frontage along Gerritsen Avenue, 122 feet of frontage along Knapp Street, 155 feet of frontage on Avenue U, 141 feet of frontage on Brigham Street, and 31,841 square feet of lot area, the Premises are occupied by a one-story gasoline service station, car wash, and accessory convenience store with 12 parking spaces.

The Board has exercised jurisdiction over the Premises since May 20, 1932, when, under BSA Cal. No. 249-29-BZ, the Board granted a variance in the application of the use district regulations of the building zone resolution, on condition that there be erected on the westerly lot line and southerly lot lines masonry walls not less than ten feet in height, these two walls to be connected on the rear lot line, faced on the side with light-colored enameled brick of panel design, coped with architectural terra cotta or natural stone; these walls may be racked or sloped back from the building of Gerritsen Avenue and Avenue U at an angle of not more than 45 degrees; portions of these walls may be eliminated where the building line is occupied to be conducted on the Premises, such as offices, grease pits, rest rooms, or accessory shops be confined to one-story masonry buildings faced with light-colored enameled brick or tile of panel design, roofed with variegated slate or Spanish tile; these buildings be located on the westerly and southerly lot line; there be erected along the building line of Old Avenue U and Gerritsen Avenue a concrete curbing not less than 12 inches in height and 12 inches in width with but one opening on Gerritsen Avenue and two on Avenue U; these three openings be not more than 14 feet wide each; the opening on Gerritsen Avenue frontage be located on the northerly portion the Gerritsen Avenue frontage wholly within a distance of 25 feet southerly from the intersection of Old Avenue U and Gerritsen Avenue; all pumps be set back not less than ten feet from the building line; any signs advertising the non-conforming use permitted under the variance be confined to the illuminated globes of the pumps or to fixed letters on the façades of the buildings erected on the Premises or to fixed letters on the inside of the walls facing Avenue U or Gerritsen Avenue; there be no portable gasoline tanks operated on or from the Premises; the westerly opening permitted on Avenue U be located not less than ten feet easterly of the westerly lot line; any portion of the gasoline tanks installed on the Premises be not less than 30 feet a way from the southerly lot line; all permits required be obtained within six months, by November 20, 1932; and all work involved completed within one year, by May 20, 1933.

On June 6, 1933, under BSA Cal. No. 249-29-BZ, the

Board amended the resolution to permit an extension of time to obtain permits and complete the work, on condition that all permits be obtained within six months, by December 6, 1933; all work completed within one year, by June 6, 1934; there be erected on the interior lot lines, except the lot line between the site under appeal and the property on Gerritsen Avenue and Knapp Street to the south, a masonry wall, not less than seven feet in height, faced on the inside with light-color brick and coped with terra cotta or natural stone; this wall may be racked or sloped back from building line of Avenue U at an angle of not more than 45 degrees; a portion of this wall may be eliminated where the building line is occupied by any accessory building to be erected on these Premises; along the interior lot line, between the site in question and the next lot southerly, facing Gerritsen Avenue and Knapp Street, there be erected a substantial wire fence, not less than seven feet in height; and the resolution be complied with in all other respects, except as modified.

On February 28, 1950, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to extend the term of the variance for 15 years, to expire on February 28, 1965, on condition that the station be reconstructed substantially as shown on the approved plans; the proposed extension be built around the side and rear of the existing cement block building as shown on plans; the occupancy of the new extension be office, lubricatorium, store room supplies, dress room, with motor testing in the existing building; the area to the west of the existing gasoline station, namely the 80 feet wide lot at the corner of Brigham Street, be used for the parking and storage of motor vehicles; a chain link fence at least five feet in height be erected along the southerly lot line from the Brigham Street building line to the corner of the proposed new building; there be a similar fence along the Brigham Street building line without any openings, and also along the Avenue U building line to the existing gasoline station, both protected by suitable bumpers; the parking area be properly graded and surfaced with cinders and tarvia binder; there be no curb cuts to the new parking area either on Brigham Street or Avenue U; all traffic to and from such area be through the gasoline station at the corner of Gerritsen Avenue and Avenue U; the owner return to the Board with a plan showing curb cuts when the Borough President requires sidewalks and curbs to be erected along Avenue U, Gerritsen Avenue, and Brigham Street; such portable firefighting appliances be maintained as the fire commissioner direct; in all other respects all laws, rules and regulations applicable be complied with; and all permits be obtained and all work completed within one year, by February 28, 1951.

On July 11, 1950, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit the arrangement and design of the accessory building to be as indicated on revised plans, provided such building complies in all other respects with the requirements of the Building Code; and in all other respects, the resolution as adopted by the Board be complied with.

On September 26, 1950, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit

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modifications to the Board-approved plans including an extension of the office and dressing room, rearrangement of gasoline pumps, and addition of one pump and as to signs advertising only the brand of gasoline on sale and extending not more than four feet from the building line, providing the sign proposed at the easterly lot line on Gerritsen Avenue is not nearer than ten feet from the brand sign on the adjoining Sunoco gasoline station, on condition that in all respects the resolution be complied with.

On February 6, 1951, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit a modification to the Board-approved plans as to the location of the pump islands, on condition that in all other respects, the requirements of the resolutions be complied with. On July 6, 1955, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit that in the event the owner desires to construct an additional building, as proposed and shown on revised plans, such building be permitted for the use as proposed and located where shown on the plans, on condition that in all other respects the building and occupancy comply with the resolution above cited; all permits required, including a new certificate of occupancy, be obtained; and all work completed within the requirements of the Zoning Resolution.

On February 15, 1956, under BSA Cal. 249-29-BZ, the Board further amended the resolution to permit that in the event the owner desires to make minor changes in connection with the proposed building as indicated on revised plans, such changes be permitted, on condition that in all other respects the requirements of the resolution be complied with, and to extend the time for obtaining permits and completion of the work, on condition that all permits required be obtained and all work completed and a certificate of occupancy be obtained within the requirements of the Zoning Resolution.

On February 6, 1962, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit that in the event the owner desires to construct an extension to the existing accessory building, such change be permitted substantially as shown on the revised drawings; and under the original term stated in the resolution there be minor auto repairs with hand tools maintained solely within the accessory building, on condition that permit be obtained and this work completed within the requirements of the Zoning Resolution; and a new certificate of occupancy be obtained; and other than as amended, the resolution be complied with in all respects.

On March 19, 1968, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit the extension of the term for ten years, to expire on March 19, 1978, on condition that along the Brigham Street frontage, the fence be repaired and painted, the sidewalk be paved in accordance with the rules and regulations of the Department of Highways, and trees be planted in accordance with the rules and 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 September 22, 1970, under BSA Cal. No. 249-29-

BZ, the Board further amended the resolution to permit that the use of an oxy-acetylene torch be permitted, incidental to the minor auto repairs with hand tools only maintained solely within the accessory building of the automotive service station and minor touch-up work be permitted, on condition there be no collision work; and other than as amended, the resolution be complied with in all respects.

On July 24, 1979, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit an extension of term for ten years, to expire on July 24, 1989, on condition that all signs not exceed a total surface area of 150 square feet; other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year, by July 24, 1980.

On October 16, 1990, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit an extension of term of the variance, for five years from the date of expiration, to expire on July 24, 1994; to permit the change in the design and arrangement of the existing automotive service station; to erect a new canopy over one new gasoline pump island with new "MPD" self-serve pumps; and to permit a 50 percent enlargement to the existing accessory building so as to provide an area for a quick lube service and attendant's booth, office, and storage area, substantially as shown on BSA-approved drawings, 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 October 16, 1991.

On May 23, 1995, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit an extension of term for ten years from the date of expiration, to expire on July 24, 2004, on condition that there be no parking of vehicles on the sidewalks, street trees and fencing be maintained in accordance with BSA-approved plans; all lights be directed downward and away from adjacent residential uses; the Premises be maintained graffiti-free; the gates on Brigham Street are removed; the Premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application; and 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 23, 1996.

On May 6, 1997, under BSA Cal. No. 249-29-BZ, the Board further amended the resolution to permit an extension of the time to obtain a certificate of occupancy, on condition that a new certificate of occupancy be obtained within 36 months from May 25, 1995, by May 25, 1998.

On December 17, 2002, under BSA Cal. No. 360-01-BZ, the Board further amended the resolution to grant a special permit, pursuant to Z.R. §§ 73-211, 73-212 and 73-03, to permit, in a C2-2 (R4) zoning district, the proposed lot area enlargement of an existing automotive service station with accessory uses (Use Group 16), by the addition of a new one-story accessory convenience store and a new metal canopy above a new fuel dispensing area contrary to

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Z.R. § 32-00, on condition that all work shall substantially conform to drawings as they apply to the objection, filed with the application; the hours of operation for the car wash and the automobile repair be limited to 8:00 a.m. to 6:00 p.m. Monday through Saturday and 8:00 a.m. to 1:00 p.m. Sunday; landscaping be provided and maintained in accordance with BSA-approved plans; there be no used car sales on the Premises; there be no parking of cars on the sidewalk at any time; there be no automobile vacuums on the Premises; the term of the special permit be limited to ten years from the date of the grant, to expire on December 17, 2012; construction be completed in accordance with Z.R. §73-70; a new certificate of occupancy be obtained within two years of this grant, October 16, 1992; the above conditions appear on the certificate of occupancy; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the Department of Buildings must ensure compliance 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 28, 2008, under BSA Cal. No. 360-01-BZ, the Board further amended the resolution to grant an extension of time to obtain a certificate of occupancy, on condition that a certificate of occupancy be obtained by April 28, 2009; all conditions from the prior resolution not specifically waived by the Board remain in effect; and the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The applicant seeks a new Z.R. § 73-211 special permit to extend the term for the use of an automotive service station with an accessory convenience store and automotive repair. The applicant describes that the following services are provided at the Premises:

- Gas filling services (self-serve operation), one employee per shift, 24 hours/ 7 days a week;
- Convenience store, one to two employees per shift, 24 hours/ 7 days a week;
- Food services, three employees per shift, 24 hours/ 7 days a week;
- Automobile repairs, four employees per shift, 8:00 a.m. to 6:00 p.m. Monday through Friday, 8:00 a.m. to 5:00 p.m. Saturday, and 8:00 a.m. to 1:00 p.m. Sunday;
- Car wash, two to four employees per shift, 8:00 a.m. to 6:00 p.m. Monday through Saturday and 8:00 a.m. to 1:00 p.m. Sunday.

The applicant submitted plans which depicted the 12,440 square foot building as separated into three separate areas, one 2,984 square foot convenience store, one 4,404 square foot car wash building, and one 5,052 square foot

service building with a basement. The applicant further describes that the the convenience store has 1,722 square feet of sales area with a restroom (1,633 square-foot sales area and 59 square-foot restroom), a food prep area, a walk in cooler, a walk in freezer, an office, an attendant area and a utility/ storage room; the automotive repair/service area has two roll up doors, with four vehicle lifts, a work access pit, four storage rooms, two restrooms, a utility room, an office, an attendant/waiting area, and stairs to the basement inside of the building; the basement has one storage area and three work platforms in an open service area; the car wash has three roll up doors, with a car wash bay, an attendant area, a waiting area, an office, a restroom, a mechanical room, a detailing area, and a roll up door inside of the building.

Furthermore, the applicant states that the automotive station has four existing concrete pump islands with existing MPDs covered by a canopy and two 12,000-gallon underground storage tanks and one 8,000 gallon underground storage tanks; 12 parking spaces with one ADA accessible space; and three vacuums along the southern commercial property line. With respect to ingress and egress from the site, the applicant declares that the entrances and exits currently at the site are designed to ensure that vehicular movement to and from the site can circulate with a minimum of obstruction to the streets and sidewalks, as the existing curb cut configuration provides curb cuts on Knapp Street, Gerritsen Avenue, and Avenue U and allows vehicular movement to the various businesses on the street.

DOB Technical Policy and Procedure Notice (“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 2,500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less. The applicant submits that the proposed accessory convenience store is 1,722 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (7,960.25 square feet).

Over the course of hearings, the Board raised concerns regarding the environmental implications of the proposed use; the continued approved use at the Premises since the expiration of the prior grant; and trash, debris, and landscaping at the site. In response, the applicant submitted a revised Environmental Assessment Statement (“EAS”) with revised sales report from the gasoline services use for December 2011 to September 2017 as well as Google photographs from August 2011 to October 2019 of the site to attest that the automotive service station has been in continuous use since the expiration of the grant. Furthermore, the applicant submitted revised plans and photographs of improvements at the site including the installed landscaping, such as wood planter box with shrubs at the southwest corner of the property and arborvitae with a

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maturation height of between 12 and 14 feet; drums removed from the outdoor area; and debris removed from the commercial lot line.

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. 20BSA090K, dated December 5, 2022. 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 July 1, 2022, the New York City Department of City Planning (“DCP”) states that it has completed the review of the project as described below for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”). 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, hereby concurs that the actions will not substantially hinder the achievement of any WRP policy. This determination is only applicable to the information received and the current proposal. Any additional information or project modifications would require an independent consistency review.

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.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby 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 make each and every one of the required findings under Z.R. §§ 73-211 and 73-03 to *permit* the operation of an automotive service station (UG 16B) with an accessory convenience store, contrary to Z.R. § 32-10, *on condition* that all work, site conditions, and operations shall conform to drawings filed with this application marked: “Board Approved: December 5, 2022 — Twelve (12) sheets” and *on further condition*:

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

THAT all lighting sources that are to be located adjacent to residential use shall be shielded from direct view

to minimize any adverse effects on surrounding residences;

THAT should the residential neighbors raise any concerns regarding light spillage onto the residential properties, the applicant shall address it immediately;

THAT signage shall be provided and maintained along the side lot and property lot lines of the car wash, regarding lowering car radio volumes and emission of loud music;

THAT the space in the rear of the subject Premises abutting the residential lot lines shall not be used for the repair or storage of vehicles or equipment;

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

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-44-BZ”), shall be obtained within four years, by December 5, 2026;

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 5, 2022.

2020-45-BZ

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, 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 §24-33(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). R6 (C2-2) Zoning District.

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

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, December 5, 2022.

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2021-61-BZ

APPLICANT – Eric Palatnik, P.C., for Eduard Magidov, owner.

SUBJECT – Application September 16, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R3-1 zoning district.

PREMISES AFFECTED – 4080 Ocean Avenue, Block 8731, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 17, 2022, acting on Alteration Type 1 Application No. B00560115-11, reads in pertinent part:

Proposed vertical enlargement of an existing single family home in an R3-1 district is non-compliant in regards to:

Lot Coverage/Open Space: Proposed Lot Coverage and open space is contrary to ZR 23-142

FAR: Proposed FAR is contrary to ZR 23-142

Rear Yard: Proposed rear yard is contrary to ZR 23-47

Side Yard: Proposed side yard is contrary to ZR 23-461(a)

And should be referred to the Board of Standards and Appeals.

This is an application, under Z.R. §§ 73-03 and 73-622, to permit, in an R3-1 zoning district, the enlargement of an existing one-story, plus cellar, single-family, semi-detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”) (Z.R. § 23-142), side yards (Z.R. § 23-461(b)), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on August 8, 2022, after due notice by publication in *The City Record*, with a continued hearing on October 18, 2022, and then to decision on December 5, 2022. Commissioner Scibetta and Commissioner Yoon performed inspections of the Premises and surrounding area. Community Board 15, Brooklyn, recommends approval of this application, on condition that the project be limited to a moderate enlargement that fits the character of the neighborhood. The Board also received two form letters of support and one form letter of objection.

The Premises are located on the west side of Ocean Avenue, between Shore Boulevard and Ocean View Avenue, within an R3-1 zoning district, in Brooklyn. With approximately 30 feet of frontage along Ocean Avenue, 100 feet of depth, and 3,000 square feet of lot area, the Premises are occupied by an existing one-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 this application seeks to enlarge an existing single-family, semi-detached residence, as contemplated in Z.R. § 73-622.

The existing building is a one-story, plus cellar, single-family, semi-detached residence with approximately 1,260 square feet of floor area (0.42 FAR), 49% OSR (1,467 square feet of open space), a side yard with a width of 4'-11", a side yard with a width of 0'-0", and a rear yard with a depth of 20'-10". The applicant proposes a horizontal and vertical enlargement of the existing building, resulting in a four-story, plus cellar, single-family, semi-detached residence with approximately 2,641 square feet of floor area (0.88 FAR), 44% OSR (1,332 square feet of open space), a side yard with a width of 4'-11", a side yard with a width of 0'-0", and a rear yard with a depth of 20'-10" at the first floor and 30'-0" at the second floor and above. The applicant intends to increase the floor area at the cellar level from 1,428 square feet to 1,487 square feet; increase the floor area at the first floor from 1,111 square feet to 1,201 square feet; and add a second floor with 883 square feet and a third floor with 557 square feet.

In the subject R3-1 zoning district, Z.R. § 23-142 permits a maximum FAR of 0.50 and requires a minimum OSR of 65%; Z.R. § 23-461(b) mandates a side yard with a minimum width of 8 feet; and Z.R. § 23-47 states that a rear yard must have minimum depth of 30 feet.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood as required by Z.R. § 73-622. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises which are bound by the same relevant bulk regulations (the “Study Area”), concluding that out of 77 residences, 63 (81%) have an FAR of 0.42 or greater, ranging from 0.42 to 0.91, 3 (4%) of which have an FAR of 0.88 or greater. With respect to OSR, the applicant submitted a lot coverage study demonstrating that out of 77 residences, 2 (3%) within the Study Area have greater than 51% lot coverage, ranging from 52% to 62%. The applicant also submitted a rear yard study of the subject block finding that out of 25 residences, 3 (12%) have rear yards with less than 20 feet of depth, ranging from 5 feet to 18 feet. Furthermore, the applicant submitted a side yard study illustrating that out of 77 residences, 4 (5%) have side yards with a width of 5 feet or less. Moreover, the applicant submitted a 1950 Sanborn Map showing that the existing side yards of 4'-11", and 0'-0", which the applicant proposes to maintain, constitute a pre-existing noncompliance (*see* Z.R. § 23-461(b)). 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

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the subject building is located, nor impair the future use or development of the surrounding area.

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

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby make each and every one of the required findings under Z.R. §§ 73-03 and 73-622 to *permit* the enlargement of an existing one-story, plus cellar, single-family, semi-detached residence that does not comply with zoning regulations for FAR, open space ratio, side yards, and rear yards, contrary to Z.R. §§ 23-142, 23-461(b), and 23-47; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Board Approved: December 5, 2022" — Nineteen (19) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum FAR of 0.88 (2,641 square feet of floor area); a minimum of 44% OSR, a side yard with a minimum width of 4'-11"; a side yard with a minimum width of 0'-0"; and a rear yard with a minimum depth of 20'-10" at the first floor and 30'-0" at the second floor and above, as illustrated on the BSA-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. 2021-61-BZ"), shall be obtained within four years, by December 5, 2026;

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 5, 2022.

CORRECTION: This resolution adopted on December 5, 2022, under Calendar No. 2022-8-BZ, is hereby corrected to read as follows:

2022-8-BZ

APPLICANT – Cuddy & Feder LLP, for AP Wireless II, LLC, owner; Crown Castle USA Inc., lessee.

SUBJECT – Application January 19, 2022– Variance (§72-21) to permit an existing cellular monopole in excess of permitted height requirement contrary to ZR §33-43. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 183-01 Harding Expressway, Block 7067, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated May 19, 2021, acting on Alteration Type 1 Application No. 44064507, reads in pertinent part: "Requesting denial for Z.R. §§ 73-03, 73-30, 32-31 and 22-21, previously approved under 348-02-BZ".

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within an C1-2 (R3-1) zoning district, the enlargement of an existing cellular monopole in excess of permitted height requirements, contrary to Z.R. § 33-431.

A public hearing was held on this application on September 13, 2022, after due notice by publication in *The City Record*, with a continued hearing on October 18, 2022, and then to decision on December 5, 2022. Community Board 11, Queens, recommends approval of this application, on condition:

- That the site be secured properly with proper fencing and locks, including security in regards to access from the roof of the neighboring establishment
- That the site be beautified and maintained with planters and be kept free of litter on an ongoing and regular basis.
- That the graffiti on site be removed and monitored for removal on an ongoing and regular basis.

Vice-Chair Chanda and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. The Board received six letters of objection, citing concerns over the proposed pole enlargement's proximity to residences; the graffiti and litter present at the site; and the lack of landscaping.

I.

The Premises are located at the southeast intersection of Horace Harding Expressway and 183rd Street, within a C1-2 (R3-1) zoning district, in Queens. With approximately 50 feet of frontage along Horace Harding Expressway, 80

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feet of depth, and 3,999 square feet of lot area, the Premises are currently occupied by a two-story, mixed-use commercial and residential building with an existing 70-foot monopole structure.

The Board has exercised jurisdiction over the Premises since March 18, 2003, when, under BSA Cal. No. 348-02-BZ, the Board granted a special permit, pursuant to Z.R. §§ 73-03, 73-30, 32-31 and 22-21, to permit, in a C2-2 (R3-2) zoning district, the proposed construction of a 70-foot monopole communications tower, on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the special permit be limited to a term of 10 years, expiring on March 18, 2013; 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; 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.

II.

The applicant proposes to modify the existing 70-foot monopole structure at the Premises by increasing its height 36 feet to an overall height of 106 feet. The applicant notes that the structure would remain in the same location adjacent to the existing two-story, mixed-use commercial and residential building and within an existing fenced compound. The applicant states that the requested enlargement would allow it to continue to provide cellular service to its customers in the area and to permit for the collocation of the monopole structure for multiple cellular companies. The applicant notes that an enlargement of this nature is necessary because the recent development of a six-story hotel immediately adjacent to the subject Premises has blocked and significantly impaired the transmission of its cellular frequencies to the northeast and that the monopole structure at its current height does not permit for collocation with other cellular companies.

The applicant contends and has submitted a DOB Zoning Resolution Determination (“ZRD-1”) attesting that as per Z.R. § 32-15(d), the subject monopole is classified as a Use Group (“UG”) 6D “other communications equipment” structure and permitted as-of-right in the subject C1-2 commercial overlay district. At issue in this instant application is the applicable height and setback regulation provision under Z.R. § 33-431. The existing 70-foot monopole penetrates the sky exposure plane proscribed by the regulation in Z.R. § 33-431, and any further height increase would also penetrate the sky exposure plane contrary to Z.R. § 33-431.

Moreover, the applicant claims that a 20-foot extension to the monopole is as of right under DOB Bulletin 2021-011, which states:

Section 6409(a) of the Middle Class Tax Relief

and Job Creation Act of 2012 (“Spectrum Act”), as interpreted by the Federal Communications Commission’s (“FCC”) Acceleration of Broadband Deployment Report & Order, requires a state or local government to approve any Eligible Facilities Request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station, provided Code requirements are satisfied including but not limited to Fire Code.

- i. The Department will accept professional certification applications by Registered Design Professionals (“RDP”) for Eligible Facilities covered by the Act, identified by the RDP as not constituting a substantial change per the Spectrum Act.
- ii. Modifications to an existing lawful antenna equipment structure that constitutes a substantial change will not be accepted through professional certification as an Eligible Facility covered by the Act, and must comply with the requirements of Use Group 6 (UG 6) “communication equipment structures,” and may be erected as-of-right in Commercial and Manufacturing Districts, subject to the zoning bulk regulations, or may be permitted pursuant to a special permit issued by the Board of Standards and Appeals.

Here, the applicant contends that only the additional 16-foot increase, past the 20 feet enlargement that is as of right, is at issue before the Board. In the subject C1-2 (R3-1) zoning district, the Zoning Resolution permits a building of a maximum height of 30 feet or two stories, whichever is less, *see* Z.R. § 33-431. Accordingly, the applicant seeks the relief requested 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. In *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364, 371, 624 N.E.2d 990, 993 (1993), the Court noted that “the construction of an antenna tower in a residential district to facilitate the supply of cellular telephone service is a ‘public utility building’ within the meaning of a zoning ordinance. the meaning of a zoning ordinance (see, *Matter of Payne v. Taylor*, 178 A.D.2d 979, 578 N.Y.S.2d 327).” As such, even where a use variance might be required under a municipal code for a cellular tower, a balancing test on the need for the facility to serve the public with any related environmental effects associated with the structure is applicable to a zoning board’s review of the application. Typically, to grant a variance the Board must make five findings pursuant to Z.R. § 72-21 that: (a) there are unique physical conditions associated with the lot; (b) that zoning compliant alternatives do not offer a reasonable return to the lot owner; (c) that the essential character of the neighborhood, development of adjacent

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property and public welfare will not be adversely impacted by issuance of a variance; (d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance were not created by the owner; and (e) that the minimum variance necessary is granted to afford relief. The applicant contends that the Z.R. § 72-21(a), (b), (d) and (e) language relating to hardship or practical difficulties for applications by non-utility applicants is not applicable in the instant request.

As a public utility, the standard of “public necessity” as set forth by the New York State Court of Appeals, the public necessity standard requires that:

[A] balance must be maintained between those interests of the locality which can be expressed by Zoning Ordinances and the needs of the community which must be served by the utility ... not only is it within the power of the Respondent [the Town] to grant a Variance but the fact the applicant is a utility calls for the balancing of interest. “...the utility must show that modification is a public necessity in that it is required to render safe and adequate service, and that there are compelling reasons, economic or otherwise, which make it more feasible to modify the plant than to use alternate sources of power such as may be provided by other facilities...[And,] where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced.

See *Matter of Cellular One v. Rosenberg*, 153 Misc.2d 302, 581 N.Y.S.2d 554 (Westchester Co. 1992), affirmed, 188 A.D.2d 648, 591 N.Y.S.2d 526 (2d Dept. 1992), affirmed, 82 N.Y.2d 364, 624 N.E.2d 990, 604 N.Y.S.2d 895 (1993). In short, the “public necessity” standard requires zoning boards to balance the need for wireless infrastructure to serve the public with the community effects of any particular facility when considering a zoning variance.

A.

First, the applicant submits that the significant wireless needs of the subject Queens neighborhood necessitate an extended height of the existing monopole facility. In support of this contention, the applicant submitted a report by a radiofrequency engineer and mapping of the area which shows large areas to the northeast which have experienced a loss of in-building and in-vehicle network services for customers serviced by this particular monopole. Additionally, the report quantifies the in-building and in-vehicle coverage losses to the northeast of the site at 11% to 38% of the geography, depending on the specific FCC frequencies in the network. Additionally, the report concludes that there are over 3,500 residents and approximately 14,000 average daily vehicle trips in these areas blocked by the new adjacent building. Furthermore, the report states that extending the monopole 36 feet in height would allow the facility to overcome the blockage brought on by the adjacent building; remedy the service

degradation to the northeast and continue to serve the coverage requirements for the site; and readily accommodate collocation.

Moreover, the applicant represents that it made repeated attempts to try and secure a rooftop lease on the new adjacent hotel site for possible replacement of the site and an as-of-right configuration, and the property owner declined to enter into a lease which makes that site not feasible as an alternative. Additionally, the applicant states that there are no as-of-right alternatives to extension of the monopole to the northeast in the area of degraded service, as the applicant’s research concluded that a 20-foot extension is not feasible to overcome the lost services to the north and that any other alternative would necessarily involve a facility at 80 feet to 100 feet in height to the northeast towards Kissena Corridor Park. The applicant states that it evaluated that northeastern area, noting that it is within an R2A zoning district, and buildings consist of lower density residential properties, a school, and a church, none of which are tall enough to accommodate an as-of-right wireless facility at the height required. Additionally, the applicant did not consider construction of a new monopole in these residential areas along Kissena Corridor Park a reasonable alternative, stating that parkland is not available for such purposes and the overwhelming majority of lots in the area are more typical of single and two-family residences.

From the submitted reports and data, the applicant concludes that the proposed monopole extension from 70 feet to 106 feet Above Ground Level (“AGL”) would achieve the following need and corresponding community benefits: 1) restored wireless services to an area covering up to 193 acres of land northeast of the facility and in-building services to an area with over 3,500 residents; 2) deployment of national public safety spectrum to serve first responders in the vicinity of the tower site and its coverage in a mixed-use area of commercial, residential, and transportation corridors; 3) restored wireless services to an area supporting thousands of weekly calls and hundreds of Gigabytes of wireless data usage by residents northeast of the facility; and 4) collocation with new wireless services introduced into this area of Queens. As such, the applicant concludes that there is a public necessity for extension of the existing monopole to 106 feet AGL, which it states, is the minimum necessary to restore services and permit effective collocation at the facility site with the required 10 feet separations of antenna centerlines.

Accordingly, the Board finds the proposed modification is a public necessity that it is required to render safe and adequate service, and that there are compelling reasons, which make it more feasible to modify the existing structure than to use alternate sources of power such as may be provided by other facilities and supplant the findings under the typical criteria set out in Z.R. § 72-21(a), (b), (d), and (e).

B.

The applicant further represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of

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adjacent property, nor be detrimental to the public welfare. Specifically, the applicant points out that the purpose of the sky exposure plane rule is to provide for light and air at street level in higher density zoning districts, (*see* Z. R. § 12-10) however, this existing monopole is located towards the front of a corner lot and adjacent to other commercial uses with frontage on Horace Harding Expressway including hotels, medical facilities, and nearby gas stations in a C1-2 (R3-1) zoning district. The applicant points out that other land uses in the area include the Long Island Expressway to the south, Francis Lewis High School located further to the west, and the predominantly residential community to the north, including the Kissena Corridor Park. The applicant also states that the proposed enlargement represents an approximately 34% increase in the height of the structure itself, a height which is the minimum technically required to restore services associated with signal blocking and the adjacent hotel, and an approximately 15% increase in the height over that permitted as of right. The applicant declares that this proposed change in height would only modestly increase visibility of the structure without an overall change in community character or impact in relation to existing conditions and submitted photographs, photosimulations, and existing and proposed plans of the subject site and surrounding streetscape in support of this contention.

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.

IV.

Over the course of hearings and in response to community concerns, the Board raised concerns regarding the site conditions and requested the applicant add additional site screening for aesthetic and safety purposes at the facility site's frontage along Horace Harding expressway and the adjacent sidewalk area; evaluate the monopole and antenna platform screening for the upper reaches of the monopole; and update the submitted photosimulations to include all collocation antenna platforms.

In response to the concerns about site conditions, the applicant provided a written site maintenance protocol along with additional information regarding site security, committing to the following:

- I. Enhanced site maintenance, monitoring and inspections by Crown as the monopole/compound owner:
 - a. Crown personnel to conduct site visits monthly:
 - i. Clear any debris from the site compound and area adjacent to the sidewalk
 - ii. Clear/clean/remove any graffiti from the site compound, fencing and related cellular improvements
 - iii. Identify any conditions that require

additional site maintenance or repair and coordinate completion by Crown contractors

- iv. Carrier tenants to continue to monitor site equipment and alarms remotely 24/7 through their respective National Operations Centers. Carrier Site IDs and NOC #s are:
 1. AT&T Site # NYNYNY0081
 2. T-Mobile Site # BQ04950A
 3. Dish Site # NYNYC01322A
 - b. Crown to continue to perform annual ground based inspections of the site improvements and facilities
- II. Streetscape improvements at facility frontage on Horace Harding Expressway [The Board notes that the BSA-approved plans titled "ANT 112.00" and "ANT 113.00" illustrate these proposed improvements.]
- a. Attached plan incorporates streetscape improvements to address site security and aesthetics to be installed and maintained as a BSA condition
 - b. A decorative wrought iron fence shall be installed with hedges along with a new concrete apron adjacent to the sidewalk
 - c. Plantings and other improvements will be installed that are scaled and sited to deter trespassing, screen the facility and improve the area adjacent to the sidewalk
 - d. Contact information for community members requesting a maintenance site visit:
 - i. If warranted, a member of the community may call to log a ticket with the Crown Castle National Operations Center at 800-788-7011, referencing site ID#843090, and stating any conditions such as vandalism or excessive litter in the compound area.

Additionally, the applicant submitted revised plans which demonstrated proposed improvements that include security fencing with hedge slats, landscaping, decorative fencing, proposed collocation, and sidewalk improvements that address site security and the streetscape as well as updated photographs which show a site free of debris and graffiti.

Lastly, the applicant submitted a report by licensed professional engineers evaluating: 1) adding faux evergreen or other antenna screening materials to the extended monopole and antenna platforms; or 2) construction of a new concealment superstructure. The report concluded that the tower site compound and existing monopole cannot be feasibly modified to support the additional loading associated with evergreen or other forms of antenna screening or replaced altogether.

V.

The project is classified as an Unlisted action pursuant

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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. 22BSA020Q, dated December 5, 2022. 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.

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.

VI.

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*, the enlargement of an existing cellular monopole in excess of height requirements, contrary to Z.R. § 33-431, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Board Approved: December 5, 2022” — Twenty (20) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a UG 6D monopole structure with a maximum height of 106 feet;

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

THAT landscaping shall be maintained as per BSA-approved plans;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2022-8-BZ”), shall be obtained within four years, by December 5, 2026;

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 5, 2022.

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M., for continued hearing.

2017-269-BZ

APPLICANT – David L Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot (s) 0001, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M., for continued hearing.

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – Variance (§72-21) to permit the development of a 17-story, mixed-use, community facility and residential building on a waterfront lot contrary to ZR §62-322 (Floor Area and Floor Area Ratio (“FAR”)); ZR §62-341 (Maximum Base Height and Building Height); ZR §62-341(a)(2) (Setbacks) and ZR §§25-23 & 25-31 (parking). R6 zoning district.

PREMISES AFFECTED – 128 Beach 9th Street, Block 15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M., for continued hearing.

2019-256-BZ

APPLICANT – Sheldon Lobel, P.C., for SB1 Holdings LLC, owner.

SUBJECT – Application September 6, 2019 – Variance (§72-21) to permit the development of a 12-story mixed-use building, with ground floor commercial space (UG 6), and ambulatory diagnostic facility community space (UG 4)

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contrary to floor area (§§ 33-123) and parking (§ 36-21).
C4-2 zoning district.

PREMISES AFFECTED – 1508 Avenue Z, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 8-9, 2023, at 10 A.M., for continued hearing.

2019-304-BZ & 2019-305-A

APPLICANT – Sheldon Lobel, P.C., for 82 Willis, LLC, owner

SUBJECT – Application December 19, 2019 – Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §§23-662(a) and 123-662 (b)) (height). Waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district.

PREMISES AFFECTED – 180 East 132nd Street, Block 2260, Lot 180, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M., for continued hearing.

2020-14-BZ

APPLICANT – Akerman LLP, for 34-10 12th 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 12th Street, Block 326, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M., for continued hearing.

2021-42-BZ

APPLICANT – Law Office of Lyra J. Altman, for Project L29 LLC, owner.

SUBJECT – Application June 11, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Ohr Shraga D’Veretzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). R2 zoning district.

PREMISES AFFECTED – 2901 Avenue L, Block 7629, Lot(s) 6 and 10, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

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

Commissioner Yoon.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 9-10, 2023, at 10 A.M., for decision, hearing closed.

2021-64-BZ

APPLICANT – Law Office of Lyra J. Altman, for Ouni Mamrout, owner.

SUBJECT – Application October 12, 2021 – Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 zoning district.

PREMISES AFFECTED – 205-207 Gravesend Neck Road, Block 7154, Lot(s) 3 & 4, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 8-9, 2023, at 10 A.M., for decision, hearing closed.

2021-87-BZ

APPLICANT – Eric Palatnik, P.C., for ZL Macedonia, LLC, owner.

SUBJECT – Application December 27, 2021 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-20. C4-3 zoning district.

PREMISES AFFECTED – 37-16 Union Street, Block 4978, Lot 46, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 22-23, 2023, at 10 A.M., for deferred decision.

2022-31-BZ

APPLICANT – Fox Rothschild LLP, for 337 Garage, LLC, owner; The Browning School, lessee.

SUBJECT – Application May 31, 2022 – Variance (§72-21) to permit the conversion and enlargement of an existing building to facilitate a UG 3 school (The Browning School) contrary to underlying rear yard and height regulation. C2-5/R8B zoning district.

PREMISES AFFECTED – 337 East 64th Street, Block 1439, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to March 13-14, 2023, at 10 A.M., for continued hearing.

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PUBLIC HEARINGS
MONDAY-TUESDAY, DECEMBER 5-6, 2022
2:00 P.M.

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

ZONING CALENDAR

2020-51-BZ, 2020-53-BZ, 2020-52-A & 2020-54-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for
Nord, LLC, owner.
SUBJECT – Application June 12, 2020 – Variance §72-21
to permit the development of a self-storage warehouse (UG
16) contrary to ZR 22-10; located on a site not fronting on a
mapped street contrary to General City Law §36. M1-1 and
R3-2 zoning district.
PREMISES AFFECTED – 105 Ridgeway Avenue, Block
2610, Lot 150, Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Laid over to March
13-14, 2023, at 10 A.M., for continued hearing.

2022-15-BZ
APPLICANT – Rampulla Associates Architects, for 5 Little
Clove Road LLC, owner.
SUBJECT – Application February 28, 2022 – Special
Permit (§73-126): to permit the development of an
ambulatory diagnostic or treatment health care facility.
R3X Lower Density Growth Management Area.
PREMISES AFFECTED – 5 Clove Road, Block 661, Lot(s)
28, 31, 32, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to March
13-14, 2023, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director