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New Case Filed Up to January 14, 2014

321-13-BZ

37-19 104th Street, Between 37 Avenue and 37 Road, Block 1771, Lot(s) 42, Borough of **Queens, Community Board: 3**. Variance (§72-21) application seeks to vary the side yard requirements of §23-462(a) and the parking space requirements of §25-32. R5 zoning district. R5 district.

322-13-BZ

42-01 Main Street, Located on the southeast corner of the intersection of Main Street and Maple Avenue., Block 5135, Lot(s) 1, Borough of **Queens, Community Board: 7**. Reinstatement (§11-411) of a previously approved variance which permitted accessory parking on the zoning lot for the use Group 6 commercial building; Waiver of the Rules. R6/C1-2 and R6 zoning district. R6/C1-2 and R6 district.

323-13-BZ

127 East 71st Street, East 71st Street between Park and Lexington Avenues, Block 1406, Lot(s) 12, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-621) to permit the proposed alteration, which will enlarge the footprint and include a vertical enlargement at the rear portion of the existing four story, plus cellar and basement contrary to lot coverage §23-145. R8B (LH-1A) zoning R8b, LH-1-A district.

324-13-BZ

78-32 138th Street, Located on the southwest corner of the intersection of 138th Street and 78th Road., Block 6588, Lot(s) 25, Borough of **Queens, Community Board: 8**. Special Permit (§73-621) to request an amended special permit to allow the enlargement of a single-family residence located within an R2 zoning district, contrary to floor area and open space regulations. R2 zoning district. R2 district.

325-13-BZ

3170 Webster Avenue, East side of Webster Avenue at intersection with East 205th Street, Block 3357, Lot(s) 37, Borough of **Bronx, Community Board: 7**. Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (PCE) within a portions of commercial building, contrary to §32-10. C2-4/R7D zoning district. C2-4(R7D) district.

326-13-BZ

16-16 Whitestone Expressway, West Side of Whitestone Expressway(service road), 920.47 ft. north of 20th Avenue, Block 4148, Lot(s) 50,65, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to reduce required off-street parking accessory to office building. M1-1(CP) district.

327-13-BZ

1504 Coney Island Avenue, Property occupies the northwest corner of Coney Island Avenue and Avenue L, Block 6536, Lot(s) 28,30,34,40,41,42,43, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-44) to reduce the required number of accessory parking spaces stipulated by Section 36-21(ZR) for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1 fro one space per 400sf. Of flo C8-2 R5/C2-3 district.

328-13-BZ

8 Berry Street, Northeast corner of Berry Street and North 13th Street, Block 2279, Lot(s) 26, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (PCE) in a manufacturing zoning district. M1-1 zoning district. M1-1 district.

329-13-BZ

145 Girard Street, Located on the East side of Girard Street, approx 600 ft South of intersection with Hampton Avenue., Block 8750, Lot(s) 386, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to legalize a three-story single family residence, with total 6,234 sq. ft. floor area. R3-1 zoning district. R3-1 district.

330-13-BZ

2801 Brown Street Located on the East side of Brown Street, approx,230 ft South of intersection with Shore Parkway., Block 8800, Lot(s) 0095, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit a two- story (one story plus mezzanine) single family residence, with total 1142 sq. ft. floor area. R4-1 zoning district. R4-1 district.

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331-13-BZ

2005 86th Street, Premises is located on the north side of 86th street just west of its intersection with 20th Avenue., Block 6346, Lot(s) 5, Borough of **Brooklyn, Community Board: 11**. Special Permit (§73-36) to allow the operation of a physical culture establishment (fitness center) within the existing building at the Premises. C4-2 zoning district. C4-2 district.

1-14-BZ

525 West 42nd Street, Northerly side of West 42nd Street 325 feet easterly of Tenth Avenue, Block 1071, Lot(s) 42, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow the operation of a physical culture establishment (PCE) spa at the building contrary to (ZR)32-31. C6-4 zoning district. C6-4 district.

2-14-BZ

555 6th Avenue, Westerly side of 6th Avenue between West 15th Street and West 16th Street, Block 79, Lot(s) 36, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow the operation of a physical culture establishment/health club in portions of the cellar and first floor of the building. C6-2A/R8B zoning district. C6-2A/R8B district.

3-14-BZ 12-18 East 89th St., situated on the South side of East 89th St, 0 feet west of the corner formed by the intersection of Madison Avenue and East 89th Street., Block 1500, Lot(s) 62, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the enlargement of St David's School. R8B/R10/C1-5MP zoning district. R8B/R10/C1-5MP district.

4-14-BZ

1065 Avenue of The Americas, NWC of Avenue of the Americas and West 40th St, Block 993, Lot(s) 29, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow physical culture establishment within portions of an existing commercial building contrary to (ZR)32-10 zoning resolution. C5-3(mid)(T) zoning district. C5-3(Mid)(T) district.

5-14-BZ

1807 East 22nd Street, East side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot(s) 64, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of an existing single family residence located in a residential (R3-2) zoning district. R3-2 district.

6-14-BZ

2525 Victory Boulevard, Northwest corner of Victory Boulevard and Willowbrook Road, Block 1521, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-211) to permit for an existing Use Group 16, automotive service station on an R3-2C-21 zoning district seeks to convert the existing automotive service bays into an accessory convenience store and enlarge the existing accessory buildin 73-211& 73-03 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

FEBRUARY 4, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 4, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

823-19-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Minzer, owner.

SUBJECT – Application April 20, 2012 – Amendment of a previously approved variance which permitted a one story warehouse (UG 16) within a residential zoning district. The application seeks to amend the previously approved plans to reflect the proposed construction of an as-of-right 2 story community facility (UG 4) and an alteration pursuant to (§11-412) to reduce the ground floor warehouse space to accommodate 13 required accessory parking spaces for the proposed community facility use. R5 zoning district.

PREMISES AFFECTED – 1901 10th Avenue, southeast corner of East 19th Street and 10th Avenue, Block 890, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

5-28-BZ

APPLICANT – Eric Palatnik, P.C., for Steven Feldman, owner; Anwar Ismael, lessee.

SUBJECT – Application August 20, 2013 – Amendment (§11-413) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B). The amendment seeks to change the use to a Car Rental Establishment (UG 8). R6 zoning district.

PREMISES AFFECTED – 664 New York Avenue, west side of New York Avenue, spanning the entire length of the block between Hawthorne Street and Winthrop Street, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

923-77-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1899-1905 McDonald Avenue Associates, LLC, owner.

SUBJECT – Application November 14, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted a one story manufacturing building which expired on May 31, 2013. R5 (OP) zoning district.

PREMISES AFFECTED – 1905 McDonald Avenue, east side of McDonald Avenue, 105 ft. south of Quentin Road, Block 6658, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

16-93-BZ

APPLICANT – Carl A. Sulfaro, for 110 Christopher Street, LLC, owner.

SUBJECT – Application November 15, 2013 – Extension of Term (§11-411) of a previously approved Variance (§72-21) which permitted retail (UG 6) in the cellar of an existing five (5) story and cellar multiple dwelling, which expires on February 23, 2014. R6 zoning district.

PREMISES AFFECTED – 110 Christopher Street, south side of Christopher street 192'-6.26 West of Bleeker Street, Block 588, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

164-13-A

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse DOB determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #7M

ZONING CALENDAR

211-12-BZ

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of residential building contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

64-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Chakkalo and Abdo Chakkalo, owners.

SUBJECT – Application February 11, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R4 (OP) zoning district.

CALENDAR

PREMISES AFFECTED – 712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue, Block 7184, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

234-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Dov Lipschutz, owner.

SUBJECT – Application August 16, 2013 – Variance (§72-21) for the enlargement of an existing two-family detached residence to be converted to a single-family home contrary to minimum front yard (§23-45(a)); and less than the required rear yard (ZR §23-47) minimum rear yard. Special Permit (§73-621) for an enlargement which is contrary to floor area (ZR 23-141). R3-2 zoning district.

PREMISES AFFECTED – 1653 Ryder Street, aka 1651 Ryder Street, Located on the northeast side of Ryder Street between Quentin road and Avenue P, Block 7863, lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

272-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 78-14 Roosevelt LLC, owner; Blink 78-14 Roosevelt, Inc., lessee.

SUBJECT – Application September 18, 2013 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within a portions of an existing commercial building contrary to §32-10 zoning resolution. C2-3/R6 & R5 zoning district.

PREMISES AFFECTED – 78-02/14 Roosevelt Avenue aka 40-41 78th Street and 40-02 79th Street, south side of Roosevelt Avenue between 78th Street and 79th Street, Block 1489, Lot 7501, Borough of Queens.

COMMUNITY BOARD #4Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 14, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

360-65-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Dalton Schools, Inc., owner.

SUBJECT – Application July 19, 2013 – Amendment of previously approved Variance (§72-21) and Special Permit (§73-64) which allowed the enlargement of a school (*Dalton School*). Amendment seeks to allow a two-story addition to the school building, contrary to an increase in floor area (§24-11) and height, base height and front setback (§24-522, §24-522)(b)) regulations. R8B zoning district.

PREMISES AFFECTED – 108-114 East 89th Street, midblock between Park and Lexington Avenues, Block 1517, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4
Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance pursuant to ZR § 72-21 and special permit pursuant to ZR § 73-641 which authorized the enlargement of the Dalton School (“Dalton”) contrary to bulk regulations; and

WHEREAS, a public hearing was held on this application September 24, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on January 14, 2014; and

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

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

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, a representative of the Board of Directors of 1095 Park Avenue provided testimony that included neither support nor opposition to the application; the representative did note Dalton’s cooperation and ongoing efforts to mitigate the expansion’s impact on 1095 Park Avenue; and

WHEREAS, representatives from Carnegie Hill Neighbors, the Board of Managers of 111 East 88th Street, the Board of Directors of 1105 Park Avenue, and certain members of the surrounding community provided testimony in opposition to the application (the “Opposition”) citing the following concerns: (1) the effect of the expansion on neighboring properties with respect to natural light, ventilation, solar glare, shadows, noise, aesthetics, traffic during construction, and long-term property values; (2) the scale of the expansion in comparison to other mid-block, R8B buildings; (3) the fact that the site is already non-complying and has previously obtained bulk variances; (4) the absence of community outreach and Community Board support for the application; (5) the lack of an initial environmental assessment study (“EAS”) and the lack of time to review and respond to the EAS that was prepared; (6) the failure to address the (a), (c), and (e) findings of ZR § 72-21; (7) the misapplication of the Cornell doctrine for educational and religious institutions; (8) the precedent being set for other educational institutions within the mid-block contextual districts and citywide; and (9) the failure of Dalton to examine alternative sites and proposals; and

WHEREAS, the subject site is located mid-block on the south side of East 89th Street between Park Avenue and Lexington Avenue, in an R8B zoning district; and

WHEREAS, the site has 101.67 feet of frontage along East 89th Street and 10,235 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story building (“the Building”) used entirely for Dalton’s school purposes; and

WHEREAS, the Building, which was constructed in 1929 for Dalton, originally had ten stories with a small four-story portion at the rear; and

WHEREAS, in 1965, due to increased enrollment primarily from the inclusion of boys in the formerly all girls’ school, Dalton sought a variance and special permit, pursuant to the subject calendar number, to permit a single-story vertical extension of fenced-in areas on the roofs of the fourth story and tenth story; the enlargements constituted 10,720 sq. ft. of floor area, and increased the existing non-compliance related to FAR, front/rear setback, and sky exposure plane regulations under the then-R8 zoning; and

WHEREAS, the applicant states that the extension on the fourth-story roof was for an art studio, and the extension on the tenth-story roof created a double-height 11th story for a regulation-size gymnasium; and

WHEREAS, in the early 1990s, due to increased enrollment, Dalton sought additional classroom space; accordingly, on March 3, 1992, pursuant to the subject calendar number, Dalton obtained an amendment to the grant (the “Prior Amendment”) to allow the expansion within the Building’s envelope of the tenth-story library mezzanine and the insertion of a floor slab into the double-height gymnasium to convert the gymnasium into two new classroom floors (the 11th and 12th stories); the Prior Amendment allowed for 7,092 sq. ft. of additional floor area and required relief from FAR regulations under the current

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R8B zoning (also height and setback relief attributed to minor work on the cornice and roof); the construction permitted by the Prior Amendment was completed in 1995; and

WHEREAS, accordingly, the applicant states that in the nearly 85 years since the Building was constructed, its envelope has been expanded only once, in 1965, pursuant to the variance; and

WHEREAS, the Building exists now within its 1965 building envelope, with the floor area increase granted by the Prior Amendment for 86,796 sq. ft. (8.48 FAR), 12 floors, and a total height of 143'-10"; and

WHEREAS, the applicant proposes to construct a two-story 12,164 sq. ft. enlargement above the 12th floor which will result in 98,960.4 sq. ft. of floor area (9.67 FAR), 14 floors, and a total height of 170'-5"; a rooftop greenhouse will add 6'-5" of height at its peak (the "Enlargement"); and

WHEREAS, the underlying R8B zoning district regulations allow for a maximum of 52,219 sq. ft. (5.1 FAR), a base height of 60 feet, and total height of 75 feet; and

WHEREAS, the applicant notes that Dalton occupies four buildings: 108-114 East 89th Street (the Building) occupied by the Upper School, comprising the Middle School (grades four through eight) and the High School (grades nine through twelve), totaling 929 students; 51-63 East 91st Street - The Lower School, comprising the First Program (kindergarten through third grade), totaling 376 students; 200 East 87th Street - The Physical Education Center; and 120 East 89th Street – offices; and

WHEREAS, the applicant represents that Dalton's enrollment has increased by only 25 students since the Board approved the Prior Amendment, but the curriculum has evolved such that it is necessary for Dalton to provide additional classroom space in the Building; and

WHEREAS, the applicant represents that the programmatic need for the enlargement is to develop Dalton's "STEM" program for science, technology, engineering and mathematics education, which is at the center of nationwide initiatives to transform education, from the primary grades through graduate school, by reemphasizing the science-based fields; and

WHEREAS, the applicant represents that Dalton is currently unable to offer the programming, particularly in technology and engineering to satisfy the goals of a competitive STEM curriculum; and

WHEREAS, specifically, for example, Dalton states that only 30 high school students are enrolled in the robotics course, which combines elements of engineering and computer science; and

WHEREAS, the applicant asserts that the modest enrollment is attributed to the lack of a specialized engineering space which would allow students to construct and test projects during the school day; instead, such work now must take place after school or on Saturdays, which deters students who are on a team sport or play an

instrument and have practices and games or other activities scheduled after school; and

WHEREAS, the applicant states that the need to construct and test robots after school causes additional difficulties; the robots are tested on a 12-ft. by 12-ft. robotics movement "field" where they perform their designed tasks; the applicant notes that because this activity occurs after normal school hours in the computer science classroom, the first and last half hours of each after-school session is spent setting up and dismantling the movement field; and

WHEREAS, the applicant states that the Enlargement would allow for a permanent movement field and eliminate the wasted set-up and dismantling time; also, without a specialized engineering space, robots have to be stored on the floor in the computer science classroom which limits the size of the robots that can be constructed and curtails Dalton's participation in FIRST, a not-for-profit organization devoted to helping young people discover and develop a passion for STEM; and

WHEREAS, as to computer science, the applicant states that a basic computer science class requires a room with computer stations and a space for group work on problems; Dalton currently has one such combined room for its entire computer science program thus it is occupied by classes during every available period and is used for Lab meetings during the other periods, such as lunch periods – Lab periods are especially critical in computer science classes due to the need for incremental adjustments to projects that require meetings between student and teacher with access to the equipment; and

WHEREAS, Dalton represents that in 2005, 43 of its high school students took computer science; in 2012, 203 of the 455 high school students signed up to take the course, but only 184 were able to be enrolled in 2013 due to space limitations; for 2014, 254 students have signed up and they expect even more students to sign up in the future; and

WHEREAS, the applicant states that with the complete utilization of Dalton's one computer science classroom, no additional students can take computer science, nor can Dalton offer any computer science classes to middle school students, or provide new computer science classes in a greater variety of subareas; and

WHEREAS, the applicant represents that to meet the demand for additional computer science classroom space, the Enlargement would have computer science classrooms adjacent to both the High School and Middle School Facilities; and

WHEREAS, additionally, Dalton cites to deficiencies in its science program with insufficient space for students to participate in long-term in-house research projects that can be performed in the Building; in 2013 only 12 of the 48 students who signed up to perform long-term in-house research projects could be so placed; the other 36 students could not perform experiments and had to limit their work to theory; and

WHEREAS, the applicant states that the proposed

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Enlargement would contain two specialized robotics and engineering facilities, each of which takes up the space of approximately three regular classrooms, a long-term science research lab (approximately the size of two-to-three regular classrooms), and a greenhouse (approximately the size of three regular classrooms) (collectively, the “New Facilities”), which Dalton needs in order to correct the deficiencies in its STEM program; and

WHEREAS, the applicant submitted a matrix that shows the occupancy of each regular classroom, for each period, in each day of a typical school week during the most recent school year to support its point that the Building’s existing classrooms are fully utilized and there is no classroom space in the Building for new courses or additional sections of existing courses; thus, the Building’s classroom space cannot be converted into the New Facilities; and

WHEREAS, the matrix reflects that regular classrooms are occupied during 74.88 percent of the periods in a school week, but notes that in the periods in which these classrooms are not being used for a class, students who would otherwise use these rooms are at lunch, gym or assembly, so that when accounting for these periods, the adjusted weekly-utilization rate for regular classrooms is 89.83 percent; and

WHEREAS, the applicant represents that during the approximately 10 percent of periods when the rooms could be used by classes, they are usually occupied by teachers and students engaged in Lab meetings, either because access to materials in the classroom is needed, or because there is insufficient faculty office space for these meetings to occur elsewhere; and

WHEREAS, the applicant represents that the nearly 90 percent adjusted-utilization rate of Dalton’s regular classrooms is very high and it would be difficult to increase the rate because it would be very hard to match the scattered room availability with both student and teacher availability; and

WHEREAS, the applicant also states that there is not any other non-classroom space that can be converted for the STEM use and there is not any space in Dalton’s other buildings available for the STEM use; and

WHEREAS, the applicant notes the following specific use of the Enlargement: two stories with approximately 12,200 sq. ft. of floor area; the 13th floor, containing approximately 6,100 sq. ft. of floor area, would have an approximately 480 sq. ft. machine room (the “Machine Room”), an approximately 1,200 sq. ft. high school robotics/engineering laboratory (the “High School Engineering Lab,” and together with the Machine Room, collectively, the “High School Facility”), an approximately 420 sq. ft. high school computer science classroom, an approximately 950 sq. ft. middle school robotics/engineering lab (the “Middle School Facility”) and an approximately 500 sq. ft. middle school computer science classroom; the 14th floor, also approximately 6,100 sq. ft., would contain an approximately 1,300 sq. ft. greenhouse, an approximately

1,200 sq. ft. science research lab, and three classrooms, each approximately 460 sq. ft.; and

WHEREAS, the applicant states that the High School Facility would include fabrication laboratory equipment (the “Fab Lab”), prototyping (assembly) space, a robotics area, engineering equipment, and a machine room; and

WHEREAS, the applicant states that the High School Facility will allow Dalton to meet the following primary goals: allow 85 to 110 high school students to take robotics if both the lecture and construction components of the course were provided during the school day, rather than after school and on weekends; allow students to enter competitions with the space to construct larger projects such as solar cars and gravity vehicles; to offer a variety of engineering electives, such as biological and electrical engineering, which require such a facility to construct and test projects; to offer, as an accredited course, participation in the Science Olympiad, a citywide competition combining engineering and science; and to integrate art into its STEM program by offering new courses such as Computer Science and Art (Graphics) which need to utilize the specialized Fab Lab equipment; and

WHEREAS, additionally, the new facility will allow middle school students access to robotics and engineering classes, including the Fab Lab; sufficient space to undertake long-term research projects; new science electives such as Quantum Mechanics, Advanced Environmental Science, Evolutionary Ecology, Astronomy II, Electronics, and Marine Biology that require lab projects; and

WHEREAS, finally, the Enlargement will include a greenhouse to be used for (1) Dalton’s Environmental Science class for food and agricultural studies and experiments with nutrient recycling and energy conservation, (2) biology classes, for studies on plant function and growth, (3) other classes that have units on plants or sunlight, and (4) Middle School and High School environmental clubs; and

WHEREAS, the applicant represents that the proposal will further Dalton’s programmatic needs without affecting any of the findings of the original variance grant; and

WHEREAS, the applicant further represents that the proposed facility is unable to be accommodated within Dalton’s other buildings: specifically (1) in 200 East 87th street where Dalton leases the lowest five floors, an enlargement is infeasible as the floors above are occupied by co-op apartments; (2) in 120 East 89th street where Dalton leases office space, the lease expires in 2020, and any additional space would be in doubt at the time the lease expires; and (3) expansion space off-site would not meet the programmatic needs because travelling to off-site location diminishes class time; and

WHEREAS, , the applicant states that the New York State Court of Appeals has held that in a residential district educational institutions cannot be required to show an affirmative need to expand as a condition precedent to the issuance of a discretionary approval by a zoning board. *See, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986);

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Lawrence School Corp. v. Lewis, 578 N.Y.S.2d 627 (N.Y.A.D. 2 Dept., 1992); and

WHEREAS, the applicant adds that the Cornell court also held that because “schools, public, parochial, and private, by their very nature, singularly serve the public’s welfare and morals,” zoning boards in New York should allow schools to expand into residential areas unless a particular proposed expansion “would unarguably be contrary to the public’s health, safety or welfare.” Id. at 593, 595; and

WHEREAS, the applicant asserts that Cornell crystallized the Court of Appeals’ long-standing presumption in favor of educational and religious uses in residential areas. See Diocese of Rochester v. Planning Bd. of Town of Brighton, 1 N.Y.2d 508, 526 (1956) (“schools and accessory uses are, in themselves, clearly in furtherance of the public morals and general welfare”); and

WHEREAS, further, the applicant asserts that under the State’s standard, the court has held that, for example, the potential adverse impacts on “use, enjoyment and value of properties in the surrounding areas” and on “the prevailing character of the neighborhood” are “insufficient bas[e]s on which to preclude” the substantial expansion of a religious facility in a residential neighborhood. Westchester Reform Temple v. Brown, 22 N.Y.2d 488, 494 (1968); and

WHEREAS, the applicant asserts that the proposed variance would allow Dalton to add 12,200 sq. ft. of instructional and research space in two additional floors at the top of the Building; the Enlargement will not lead to an increase in enrollment, nor will it result in additional traffic in the area; the principal affect will be on the eastern views of apartments on the top floors of 1095 Park Avenue, the building to the immediate west; and

WHEREAS, the applicant states that the Building’s configuration constitutes a unique physical condition on the zoning lot, which causes Dalton practical difficulties and unnecessary hardship that prevent Dalton from being able to carry out its proposed program in the Building, particularly in the STEM areas; and

WHEREAS, the applicant notes that construction of the Enlargement would increase the Building’s non-compliance with, and requires relief from, the applicable maximum base height, maximum building height, front setback, rear setback, and FAR requirements of the Zoning Resolution, but that strict application of the Zoning Resolution would serve no public purpose and would operate as a severe constraint on Dalton’s functioning as an academic institution; and

WHEREAS, the applicant asserts that its hardship is not one that is generally applicable to uses located in the neighborhood in which the zoning lot is located, which is predominately residential in nature; and

WHEREAS, specifically, the applicant notes that there is only one other school within 400 feet of the site, PS M169 (Robert F. Kennedy School), directly south of the site, at 110 East 88th Street, which occupies the lower floors of a 38-story residential tower; and

WHEREAS, the applicant asserts that the proposed Enlargement would not be contrary to the public’s health, safety or welfare and that it would not alter the essential visual character of the neighborhood; and

WHEREAS, the applicant asserts that because the Enlargement is designed to serve the existing school enrollment, there will be no resulting increase in the use of the Building, and thus no increase in pedestrian or vehicular traffic in the area; and

WHEREAS, as to bulk, the applicant notes that increasing the stories in the Building from 12 to 14 would raise its height by 26’-7” to 170’-5”;

WHEREAS, the applicant submitted an area map and a table which identify other buildings with comparable heights within a 400-ft. radius of the site; and

WHEREAS, the analysis reflects that of the 152 buildings shown, from 85th Street to 91st Street between Lexington and Madison avenues, there are 45 buildings with more than 13 stories, including two on the Building’s block—the property immediately to the west of the Building, 1095 Park Avenue, which has 18 stories and extends approximately 50 feet into the R8B district, and the building on the southeast corner of the Building’s block, 1085 Park Avenue, which is 15 stories; there are also five buildings with more than ten stories, and nine with more than seven stories; and

WHEREAS, the applicant asserts that the development of adjacent property will not be substantially impaired should the amendment be granted because the principal impact of the Enlargement will be on the eastern views from and light and air to the windows on the upper stories of 1095 Park Avenue, the building immediately to the west; and

WHEREAS, the applicant notes that 1095 Park Avenue is an 18-story building, with its zoning lot having 159 feet of frontage on East 89th Street, the western 100 feet are in an R10 district, and the remaining 59 feet, including the portion in which the affected windows are located, are in the same R8B district as the Building; and

WHEREAS, the applicant notes that the Enlargement and the elevator bulkhead would be between 9’-0” and 14’-10” from the affected windows in 1095 Park Avenue and the acoustic screen on the roof of the Enlargement would be approximately 25 feet away from the affected windows; and

WHEREAS, the applicant notes that the Enlargement, the elevator bulkhead, and the presence of the screen would adversely affect the views from and light and air to windows on the 15th through 18th floors, and would obstruct the light and air to some windows on the 14th floor of 1095 Park Avenue; and

WHEREAS, however, the applicant asserts that under the relevant legal standards the obstruction of the views from and light and air to the affected windows should not be considered contrary to the public’s health, safety or welfare; and

WHEREAS, the applicant notes that the Enlargement will also be visible from 13 other comparably-sized buildings; and

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WHEREAS, the applicant notes that the Enlargement will be fully enclosed and no student access will be permitted on the roof; therefore, there will be no affect with respect to noise from the Enlargement on adjacent properties; and

WHEREAS, the applicant asserts that the Enlargement will contain aspects that will contribute positively to the neighborhood, aesthetically and environmentally including an attractive brick façade to replace the current stucco-facing of the 11th and 12th floors, to match the façade of the Enlargement and the rest of the Building; and

WHEREAS, at the Board's request, the applicant identified all of its mitigation measures for sound and other potential impacts to surrounding buildings; such measures include: (1) replacement of stucco with brick on the existing top two stories, (2) enclosure of existing exposed ductwork, (3) installation of more efficient mechanical equipment and acoustic screens for noise reduction, (4) elimination of west-facing windows on the enlargement in response to 1095 Park Avenue's concerns, (5) lighting controls within the building to turn off lights when unoccupied and use of the greenhouse grow lights only during daylight hours, (6) elimination of the western stair bulkhead and water tower and reduction in height of the elevator bulkhead from 15 feet to 13 feet, (7) prohibition of the use of the roof by children, and (8) the provision of green roof and plantings on vertical surfaces visible from 1095 Park Avenue; and

WHEREAS, the applicant states that in granting the Prior Amendment, the Board made the required findings under ZR §§ 72-21, 73-03, 73-64 and 73-641 of the Zoning Resolution and that the proposed amendment does not disturb any of the prior findings; and

WHEREAS, the Opposition asserts that the application should have been filed as a new variance application instead of as an amendment on the Special Order Calendar, and it cites Westwater v. New York City Bd. of Stds. and Appeals, 2013 N.Y.Misc Lexis 4707 (1st Dept 2013) and Fisher v. New York City Bd. of Stds. and Appeals, 71 AD2d 126, 127 (1st Dept 2002) for the principle that only site changes that would be permitted as-of-right but for the prior variance—"minor" or "ministerial" changes—are properly reviewed as amendments to a variance; all other changes, the Opposition states, must be reviewed as new variance applications; as such, the Opposition states that the proposal, which would not be permitted as-of-right, was improperly filed as an amendment; and

WHEREAS, additionally, the Opposition asserts that the EAS is deficient in the following respects: (1) it fails to acknowledge that the expansion results in a building that is more similar to the adjacent R10 district than to Dalton's mid-block R8B district; (2) the shadow study addressed the incremental impact of the expansion rather than the impact of the Building as a whole; (3) the urban design analysis erroneously compared Dalton to Park Avenue building rather than buildings within the mid-block R8B; (4) the air quality study did not include the effects of the expansion on buildings other than 1089 Park Avenue; (5) the construction

impacts discussion ignores the fact that work will have to be performed outside of school hours; (6) the EAS does not address that this is the third variance application filed at the site; and (7) the Opposition also takes exception with the timing of the submission of the EAS, and states that it is contrary to SEQRA's goal of incorporating environmental considerations into the decision making process at the earliest opportunity; and

WHEREAS, finally, the Opposition asserts that the application ignores the requirements of ZR § 72-21(a), (c), and (e) in that: (1) the application does not articulate a unique physical condition inherent on the zoning lot that creates a practical difficulty in developing in accordance with the zoning regulations; (2) the application does not demonstrate how the expansion outweighs the detrimental impact on the general welfare of the surrounding community; and (3) the application includes no alternative development proposals and provides no details of the use of the building that would enable to Board to make a finding that the proposal is the minimum variance necessary; and

WHEREAS, the applicant responded to the following primary concerns raised by the Opposition (1) the assertions about the requirement for, substance of, and procedure of the EAS; (2) the incompatibility of the Enlargement with the character of the neighborhood; (3) the scope of the Enlargement and its nature as a third approval for the Building; and (4) the limitations of the case law deference afforded to educational institutions; and

WHEREAS, as to the Opposition's concerns about the form of the application and the requirement for an EAS, the applicant notes that such claims are rendered moot by its submission of an EAS; and

WHEREAS, specifically, the applicant notes that it submitted an EAS in a manner which afforded the Opposition and the Community Board in excess of 70 days to review and respond; and

WHEREAS, the applicant asserts that the Community Board has been afforded more time to review the EAS than if it had been submitted with the initial application because if the EAS had been submitted along with the initial application, it is unlikely that the Community Board would have had the opportunity to review critiques of the EAS as provided by the Opposition's consultants and likely that it would not have had more than 60 days to review; and

WHEREAS, the applicant notes that the Opposition reviewed and submitted a lengthy response to the EAS for the Board's consideration; and

WHEREAS, as to the Opposition's concerns related to alleged deficiencies in the EAS, the applicant asserts that they are without merit and that the EAS was conducted in full accordance with the methodologies set forth in the City's CEQR Technical Manual; and

WHEREAS, the applicant notes that it submitted the EAS to the Community Board more than 60 days prior to the Board's scheduled decision date, which is consistent with the 60-day period that the Community Board has to review new applications prior to the Board's first hearing; and

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WHEREAS, as to the Opposition's concerns about the EAS being submitted after the application had already been initially reviewed, the applicant notes that those concerns were raised prior to the revision of the submission schedule which allowed the Community Board and the Opposition more than 60 days to review and comment on the EAS; and

WHEREAS, as to the Opposition's concerns about the Land Use, Public Policy and Zoning Section of the EAS, the applicant notes that the Opposition's consultant concedes that the EAS "examines direct impacts" of the variance, but contends that it "ignores the possibility of indirect impacts" such as the potential that a variance granted for this project may lead to similar variances for other facilities in the R8B district; and

WHEREAS, the applicant notes that the CEQR Technical Manual requires a study of indirect impacts of an action only when a site-specific change "is important enough to lead to changes in land use patterns over a wider area" but does not require a study of indirect impacts that are speculative; and

WHEREAS, the applicant notes that as to the Opposition's concerns about the character of the R8B zoning in the mid-block, 11 other buildings in the midblocks between Park and Lexington avenues and East 87th Street and the north side of East 90th Street exceed the 75-ft. height limit of the R8B zoning district, with seven of them having heights of 150 feet or greater; and

WHEREAS, accordingly, the applicant asserts that the proposed Enlargement, which would increase the height of the Building from 143'-10" to 170'-5", would not be out of context with the midblocks in its vicinity; and

WHEREAS, in response to the Opposition's concerns regarding outreach, and questions raised by the Board, the applicant described its prior outreach to the community, including the neighbors at 1095 Park Avenue and performed additional outreach including displaying a model of the Building to 1105 Park Avenue; and

WHEREAS, as to the specific impact alleged by 1105 Park Avenue that the Enlargement would have a significant adverse effect on views from 1105 Park Avenue's south and east facing windows and would cast shadows on its façade, the applicant asserts that the Enlargement would only be visible from these windows at oblique angles at distances ranging from 80 to 160 feet (based on distances shown on the Sanborn Map); and

WHEREAS, as to the Opposition's claims that the applicant failed to provide an analysis of alternative sites, the applicant states that, following Cornell, such a discussion would be inappropriate; the court stated that "[a] requirement of a showing of need to expand, or even more stringently, a need to expand to the particular location chosen, however, has no bearing whatsoever upon the public's health, safety, welfare or morals. The imposition of such a requirement, or any other requirement unrelated to the public's health, safety or welfare, is, therefore, beyond the scope of the municipality's police power, and thus, impermissible" Cornell at 597 (citations omitted); and

WHEREAS, first, as to procedure, the Board notes that (1) New York State courts have recognized the Board's authority to establish which hearing calendar and application type is appropriate for proposals under its consideration; (2) the content of the application and the Board's analysis, rather than the calendar designation, guide the Board's review; (3) although the application was filed on the Special Order Calendar, the applicant satisfied the requirements of a variance application including specifically notification of neighbors and the submission of an EAS; and (4) the Board reviewed the application with the same degree of rigor it would had it been a new variance application; and

WHEREAS, the Board agrees with the applicant that the Opposition's case law cited in support of the timing concern is not persuasive as one case holds that environmental review must occur prior to the action by the governmental body, which is consistent with the Board's review here prior to acting on the subject application See City Council of City of Watervilet v. Town Board of Colonie, 3 N.Y. 3d 508 (2004); and

WHEREAS, as to the Opposition's assertion that the EAS should have examined the cumulative impacts of the subject application along with Dalton's two prior grants, which were granted 22 and 49 years ago, respectively, the Board agrees with the applicant that there is not any support for this contention in the CEQR Technical Manual or in Save the Pine Bush v. Albany, 70 N.Y. 2d 193, 206 (1987), which pertains to the cumulative impact of three actions to a single property over 49 years; and

WHEREAS, the Board notes that its Rules of Practice and Procedure do not require that an EAS be submitted for applications on the Special Order Calendar, but that the applicant volunteered to prepare an EAS to respond to concerns the Opposition raised and that it followed the requirements of the CEQR Technical Manual; and

WHEREAS, the Board notes that the applicant submitted the EAS to the Opposition and the Community Board more than 70 days in advance of the Board's decision, which is more time than the Community Board has in a standard application process; and

WHEREAS, the Board has considered the relevant findings and concludes that the proposal does not disturb any of the findings of the original variance or special permit; and

WHEREAS, the Board accepts the programmatic needs as legitimate and finds that the applicant has sufficiently described the specific needs for the proposed new floors and articulated a clear need for all of the proposed floor area; and

WHEREAS, the Board accepts the applicant's representations that the proposed space is necessary to accommodate the STEM programming, allow more students to participate in the programming, and to relieve the nearly 90 percent utility of the existing classrooms which constrains school-wide scheduling; and

WHEREAS, the Board notes that the streetwall, height and setback waivers are necessary so that the Building may

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follow the institutional model of uniform floor plates to promote efficiencies and have floor to floor heights that are appropriate for classroom and laboratory use and can accommodate building services; and

WHEREAS, the Board also agrees with the applicant that Cornell does not allow for a zoning board to require an educational institution to analyze alternate sites and finds that the applicant has sufficiently satisfied its minimum requirements to accommodate its programmatic needs; and

WHEREAS, as to the compatibility of the proposed use and bulk, the Board notes that the applicant does not propose to increase enrollment and, thus, the current use will be maintained; and

WHEREAS, the Board finds that the amendments including the additional 12,xxx square feet and the additional two stories and 27 feet in height will still allow the subject building to meet the © finding; and

WHEREAS, , the Board notes that the original ten-story building did not comply with the floor area or sky exposure plane at the sixth floor when the R8 zoning district regulations were imposed in 1961; and

WHEREAS, accordingly, as of 1961, before any Board action, there was not any as-of-right enlargement available to the pre-existing non-complying Building, which was originally constructed to a height in excess of 119'-3" and 6.5 FAR; and

WHEREAS, since its construction in 1929, the building also has never had a height of FAR that would comply with the 75-ft. of 5.1 community facility FAR R8B regulations which has been in effect since the 1985 rezoning of the mid-block; and

WHEREAS, the Board does not find that it is appropriate to measure any enlargement to the Building against the R8B building envelope since the current non-complying building envelope has existed since 1965; thus, the true incremental increase is from the existing 1965 building envelope with height of 143'-10" (the envelope was built to accommodate 7.7 FAR, which was increased to the existing 8.48 FAR); and

WHEREAS, the Board notes that if the Building's existing non-complying conditions established in 1965 are used as a base line, rather than the R8B envelope, the height increment is 27 feet versus 95 feet and thus a much more reasonable change than the Opposition suggests; and

WHEREAS, the Board notes that 1095 Park Avenue, which is adjacent to the school building, extends approximately 50 feet into the subject R8B midblock has an even greater degree of non-compliance with a height of 192 feet; and

WHEREAS, as a result, on the south side of the midblock where the subject site is located, the adjacent 1095 Park Avenue and the Building create a built condition with an existing non-compliance to FAR and height that extends 150 feet into the 200-ft. length of the East 89th Street midblock; and

WHEREAS, the Board further notes that the surrounding midblocks, particularly to the south (between East

85th and 88th streets between Lexington and Park avenues) and to the east (between East 88th and East 89th streets between Park and Madison avenues) are zoned for 10.0 FAR (R10 equivalent) and allow building heights of 185 feet under the contextual envelope; and

WHEREAS, the Board finds that because of the existing and surrounding context, which is more similar to an R10 equivalent context than R8B, the proposed total 9.67 FAR and 170-ft. height are appropriate; and

WHEREAS, as to the Opposition's concerns that the Enlargement will have a negative impact on surrounding buildings, the Board notes that the direct impact is on 1095 Park Avenue and that Dalton has worked with its neighbor to resolve concerns and to provide mitigation measures to lessen impact, to the extent that its Board of Directors did not oppose the project; and

WHEREAS, the Board notes that the affected windows at 1095 Park Avenue are themselves above the maximum building height of 75 feet in the R8B district as 1095 Park Avenue has 18 stories and, further that, 1105 Park Avenue has 15 stories with an oblique view of the Enlargement; and

WHEREAS, the Board agrees with the applicant that under the relevant legal standards, the obstruction of the views from the 1095 Park Avenue windows is not a sufficient justification for denying the subject application; and

WHEREAS, as to the question of whether the proposal represents the minimum variance, the Board reiterates that the applicant has established that the request for the Enlargement is required by Dalton's legitimate programmatic needs; and

WHEREAS, the Board while recognizing the legitimate concerns raised by the Opposition regarding the degree of waivers requested for the proposed action, does not believe that the approval of such action will set a precedent for future variance applications in the midblock; and

WHEREAS, specifically, the Board reviews each case based on its unique factors and context in determining the appropriateness of floor area and height and setback waivers as well as the neighborhood character finding; and

WHEREAS, the Board finds that proposed the Enlargement, given certain unique factors and context cited above, would not change the essential character of neighborhood; and

WHEREAS, the Board notes that the applicant represents that Dalton does not have plans to enlarge the Building again in the future, and the Board is concerned that any future enlargement may exceed an appropriate building height and floor area for the neighborhood and may disturb the variance findings; and

WHEREAS, the Board notes that the applicant states that Dalton does not plan to increase its enrollment; thus, the Board finds that the Building with the proposed Enlargement will relieve the high demand for classroom space and allow flexibility in the future to accommodate new programmatic needs as they arise such that additional enlargements would not be warranted; and

WHEREAS, based upon the above, the Board has

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determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated June 8, 1965, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received October 9, 2013'- (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged Building: a maximum of 14 stories, a height of 170'-5", and 98,960 sq. ft. of floor area (9.67 FAR), as reflected on the BSA-approved plans;

THAT all proposed mitigation measures, including (1) replacement of stucco with brick on the existing top two stories, (2) enclosure of existing exposed ductwork, (3) installation of more efficient mechanical equipment and acoustic screens for noise reduction, (4) elimination of west-facing windows on the enlargement, (5) installation of lighting controls within the building to turn off lights when unoccupied and use of the greenhouse grow lights only during daylight hours, (6) elimination of the western stair bulkhead and water tower and reduction in height of the elevator bulkhead from 15 feet to 13 feet, (7) prohibition of the use of the roof by children, and (8) the provision of green roof and plantings on vertical surfaces visible from 1095 Park Avenue will be installed and maintained in accordance with the BSA-approved plans;

THAT any change in the use or operator of the Building is subject to Board approval;

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

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

68-94-BZ

APPLICANT – Troutman Sanders LLP, for Bay Plaza Community Center, LLC, owner; Bally's Total Fitness of Greater New York

SUBJECT – Application September 10, 2013 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*Bally's Total Fitness*) which expires on November 1, 2014; Extension of Time to obtain a Certificate of Occupancy which expired on September 11, 2013; waiver of the Rules. C4-3/M1-1 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, bounded

by Bay Plaza Blvd. Co-Op City Blvd, Bartow Avenue and the Hutchinson River Parkway, Block 5141, Lot 810, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, an extension of term for a physical culture establishment ("PCE"), which expires on November 1, 2014, and an extension of time to obtain a certificate of occupancy, which expired on September 11, 2013; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

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

WHEREAS, the subject site is located on the south side of Bartow Avenue, between Baychester Avenue and the Hutchinson River Parkway, within a C4-3 zoning district; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-Op City Bay Plaza shopping center and occupies 20,350 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Bally Total Fitness; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C4-3 district, the operation of a PCE for a term of ten years; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years, to expire on November 1, 2014; and

WHEREAS, subsequently, the grant has been amended on various occasions; and

WHEREAS, most recently, on September 11, 2012, the Board granted a one-year extension of time to obtain a certificate of occupancy, which expired on September 11, 2013; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years and to extend the time to obtain a certificate of occupancy for one year; and

WHEREAS, in addition, the applicant seeks an amendment to reflect a minor increase in the size of the PCE from the previously-approved 20,290 sq. ft. of floor area to 20,350 sq. ft. of floor area; and

WHEREAS, as to the extension of time, the applicant represents that its application to the Department of Buildings

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for a certificate of occupancy for the PCE is pending and that it has been delayed by the existence of open violations within the shopping center unrelated to the PCE; and

WHEREAS, as to the amendment, the applicant states that the discrepancy was recently discovered and is reflected in the proposed plans; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years, an extension of time to obtain a certificate of occupancy, and the noted amendment to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 1, 1994, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on January 14, 2024 and to grant an extension of time to obtain a certificate of occupancy to January 14, 2015”; *on condition* that all work and site conditions shall comply with drawings marked ‘Received December 13, 2013’- (3) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on November 1, 2024;

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

THAT all massages must be performed only by New York State licensed massage professionals;

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

THAT a certificate of occupancy will be obtained by January 14, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

358-02-BZ

APPLICANT – Law Office of Fredrick A. Becker, 200 Park, LLP, for TSI Grand Central Incorporated d/b/a New York Sports Club, lessee.

SUBJECT – Application September 23, 2013 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment in a multi-story commercial, retail and office building, which expired on June 3, 2013; Waiver of the Rules. C5-3 (MID) zoning district.

PREMISES AFFECTED – 200 Park Avenue, south side of East 45th Street, between Vanderbilt Avenue and Dewey Place, Block 1280, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a physical culture establishment (“PCE”), which expired on June 3, 2013; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 5, Manhattan, declined to issue any recommendation regarding this application; and

WHEREAS, the subject site is located on the south side of East 46th Street, between Park Avenue and Depew Place, within a C5-3 zoning district within the Special Midtown District (MiD); and

WHEREAS, the site is occupied by a 59-story commercial building, which is commonly known as the MetLife Building; and

WHEREAS, the PCE is located on a portion of the first and second floors of the building and occupies 20,835 sq. ft. of floor area; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, on June 3, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C2-5 zoning district, the operation of a PCE for a term of ten years; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years; and

WHEREAS, at hearing, the Board requested clarification regarding whether massages were being performed at the PCE; and

WHEREAS, in response, the applicant submitted amended plans noting that no massages would be performed at the PCE; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated June 3, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on June 3, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received December

MINUTES

23, 2013’ - (4) sheets; and *on further condition:*

THAT this grant will be limited to a term of ten years, to expire on June 3, 2023;

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

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

THAT a certificate of occupancy will be obtained by January 14, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

206-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, Esq., for 980 Madison Owner LLC, owner; Exhale Enterprises, Inc., lessee.

SUBJECT – Application September 12, 2013 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*Exhale Spa*) which expired on November 5, 2013. C5-1 (MP) zoning district.

PREMISES AFFECTED – 980 Madison Avenue, west side of Madison Avenue between East 76th Street and East 77th Street, Block 1391, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a physical culture establishment (“PCE”), which expired on November 5, 2013; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

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

WHEREAS, the subject site is located on the west side of Madison Avenue, between East 76th Street and East 77th

Street, within a C5-1 zoning district within the Special Madison Avenue Preservation District within the Upper East Side Historic District; and

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

WHEREAS, the PCE is located on a portion of the second floor of the building and occupies 7,700 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Exhale Spa; and

WHEREAS, on November 5, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C5-1 district, the operation of a PCE for a term of ten years; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years; and

WHEREAS, at hearing, the Board requested clarification regarding an open elevator violation from the Department of Buildings (“DOB”); and

WHEREAS, in response, the applicant submitted a DOB record indicating that the elevator violation was dismissed on December 10, 2013; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 5, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on November 5, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received December 23, 2013’ - (5) sheets; and *on further condition:*

THAT this grant will be limited to a term of ten years, to expire on November 5, 2023;

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

THAT a certificate of occupancy will be obtained by January 14, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

MINUTES

265-08-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 70 Wyclkoff LLC, owner.

SUBJECT – Application October 23, 2013 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building, which expired on September 27, 2013. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, southeast corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4
Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a four-story residential building; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, the site is located on the southeast corner of Wyckoff Avenue and Suydam Street, within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject calendar number, the Board granted a variance to legalize the residential conversion of an existing four-story manufacturing building; a condition of the grant was that a new certificate of occupancy be obtained by December 23, 2009; and

WHEREAS, most recently, on September 27, 2011, the Board granted an extension of time to obtain a certificate of occupancy, which expired on September 27, 2013; and

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

WHEREAS, the applicant represents that delays resulting from the need to resolve Department of Buildings (“DOB”) objections, obtain permits to implement DOB requirements, complete the required physical changes, and schedule the required DOB inspections prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

WHEREAS, the applicant states that the latest delay is due to DOB’s requirement of a full overhaul of the central boiler system, including the installation of separate systems

for hot water and for baseboard heating and all related piping; and

WHEREAS, accordingly, the applicant now requests an additional three years to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board requested clarification regarding whether permits had already been obtained for the required work and whether tenants would be displaced during such work; and

WHEREAS, in response, the applicant stated that permits have been obtained for the required work and that tenants will not be displaced while the work proceeds; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 23, 2009, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to September 27, 2016; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy will be obtained by September 27, 2016;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 310199969)

Adopted by the Board of Standards and Appeals January 14, 2014.

20-12-BZ

APPLICANT – Herrick Feinstein LLP by Arthur Huh, for LNA Realty Holdings LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application October 21, 2013 – Amendment to a previously granted Special Permit (§73-36) for the legalization of a physical culture establishment (*Retro Fitness*) to obtain additional time to obtain a public assembly license. M1-2/R6B Special MX-8 zoning district. PREMISES AFFECTED – 203 Berry Street, northeast corner of N. 3rd Street and Berry Street, Block 2351, Lot 1087, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Hinkson and Commissioner Montanez4
Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a special permit for the operation of a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Berry Street and North Third Street, within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the site is occupied by a five-story mixed commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2012 when, under the subject calendar number, the Board granted a special permit to legalize the operation of the PCE on the first floor and sub-cellar of the building; a condition of the grant was that a Public Assembly Permit (“PA”) be obtained by January 10, 2013; and

WHEREAS, the applicant states that it has not yet obtained the PA due to a series of administrative delays at the Department of Buildings (“DOB”); in addition, the applicant represents that DOB policy requires that the special permit grant reference DOB Application No. 302334597 (a New Building application filed at the site) instead of Application No. 320411256 (an Alteration Type-1 application), which was noted in the prior grant; and

WHEREAS, as such, the applicant now seeks an amendment permitting: (1) additional time to obtain the PA; and (2) a change to the DOB application noted on the grant to Application No. 302334597; and

WHEREAS, based upon its review of the record, the Board finds that the amendment is appropriate with certain conditions as set forth below.

Therefore it is Resolved, reopens and amends the resolution, dated July 10, 2012, so that as amended the resolution reads: “the applicant will obtain a Public Assembly permit from the Department of Buildings by January 10, 2015”; on condition that all work and site conditions will comply with the previously-approved drawings; and on further condition:

THAT the applicant will obtain a Public Assembly permit from DOB by January 10, 2015;

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

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 302334597)

Adopted by the Board of Standards and Appeals,
January 14, 2014.

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Avenue, LLC, owner.

SUBJECT – Application August 26, 2013 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage, which expired on January 11, 2012; Waiver of the Rules. M1-6 (*Garment Center*) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of 7th Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

13-78-BZ

APPLICANT – Sheldon Lobel, P.C., for 2K Properties Inc., owner.

SUBJECT – Application July 23, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a plumbing supply establishment (*Jamaica Plumbing and Heating Supply, Inc.*) which expired on June 27, 2013. R4-1 & R6A/C2-4 zoning districts.

PREMISES AFFECTED – 144-02 Liberty Avenue, east side of Liberty Avenue between Inwood Street and Pinegrove Street, Block 10043, Lot 6, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for continued hearing.

327-88-BZ

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.

SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

MINUTES

Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1
ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.
SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.
PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

42-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1221 Avenue holdings LLC, owner; TSI West 48, LLC dba New York Sports Club, lessee.
SUBJECT – Application October 2, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on July 22, 2013; Amendment to the hours of operation; Waiver of the Rules. C6-5, C6-6 (MID) zoning district.
PREMISES AFFECTED – 1221 Avenue of the Americas, western block front of the Avenue of Americas between West 48th Street and West 49th Street, Block 1001, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

381-04-BZ

APPLICANT – Sheldon Lobel, P.C., for 83 Bushwick Place, LLC, owner.
SUBJECT – Application December 6, 2013 – Extension of time to complete construction of a previously-granted variance (§72-21) for a residential building, which expired on September 12, 2006. Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 83 Bushwick Place aka 225-227 Boerum Street, northeast corner of the intersection of Bushwick Place and Boerum Street, Block 3073, Lot 97, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

297-06-BZ

APPLICANT – Eric Palatnik, for Montgomery Avenue Properties, LLC, owner.
SUBJECT – Application November 15, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a four-story residential building with ground and cellar level retail, which expired on October 16, 2011; Waiver of the Rules. C4-2 (HS) zoning district.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

25-08-BZ

APPLICANT – Eric Palatnik, P.C., for Torah Academy for Girls, owner.
SUBJECT – Application February 14, 2013 – Amendment to a Variance (§72-21) which permitted bulk waivers for the construction of a school (*Torah Academy for Girls*). The proposed amendment seeks to enlarge the school to provide additional classrooms. R4-1 zoning district.

PREMISES AFFECTED – 444 Beach 6th Street, Beach Street and Meehan Avenue, Block 15591, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February
4, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

58-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for
Sylvaton Holdings LLC, owners.

SUBJECT – Application February 5, 2013 – Proposed
construction of a twelve-family residential building located
partially within the bed of a mapped but unbuilt street
contrary to General City Law Section 35. R4/M3-1 zoning
district.

PREMISES AFFECTED – 4 Wiman Place, west side of
Wiman Place, south of Sylvaton Terrace and north of
Church Lane, Block 2827, Lot 205, Borough of Staten
Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Hinkson and Commissioner Montanez4
Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island
Commissioner Borough Commissioner, dated July 15, 2013,
acting on Department of Buildings Application No.
520118596, reads in pertinent part:

Proposed construction on a 12-10 (a) Zoning Lot
located within the bed of a mapped street is
contrary to Section 35 of the General City Law.
Therefore, Board of Standards and Appeals
approval is required; and

WHEREAS, this is an application to allow the
construction of a three-story, 12-unit residential building with
eight accessory off-street parking spaces; the westerly portion
of the building will be located partially in the bed of the
mapped Wiman Place; and

WHEREAS, a public hearing was held on this
application on August 13, 2013, after due notice by
publication in *The City Record*, with continued hearings on
October 22, 2013, November 26, 2013, and December 17,
2013, and then to decision on January 14, 2014; and

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

WHEREAS, the subject site is located on the west side
of Wiman Place, south of Sylvaton Terrace and north of
Church Lane, partially within an R4 zoning district and

partially within an M3-1 zoning district within Community
Board 1, Staten Island; and

WHEREAS, pursuant to ZR § 77-11, the use regulations
applicable to the R4 zoning district may be applied to the
entire subject zoning lot as the subject lot existed on
December 15, 1961, more than 50 percent of the lot area is
within the R4 zoning district, and the greatest distance from
the mapped district boundary (17 feet) is less than 25 feet; and

WHEREAS, by letter dated May 2, 2013, the Fire
Department states that it has reviewed the proposal and has
offered no further objections provided that: (1) the entire
building be fully sprinklered in conformity with the sprinkler
provisions of the NYC Fire Code Section 503.8.2, Local Law
10 of 1999 and Reference Standard 17-2B of the New York
City Building Code and (2) the entire building be provided
with interconnected smoke alarms designed and installed in
accordance with NYC Building Code Section 907.2.10; and

WHEREAS, by letter dated February 25, 2013, the
Department of Environmental Protection (“DEP”) states that
(1) there are no existing City sewers or existing City water
mains in the bed of Wiman Place between Sylvaton Terrace
and Church Lane at the site and (2) City Drainage Plan No.
PRD-A, Sheet 3 of 6, dated July 1968, for the above
referenced location calls for a future 10-inch diameter sanitary
sewer and a 12-inch/15-inch storm sewer in the bed of Wiman
Place between Sylvaton Terrace and Church Lane; and

WHEREAS, DEP further states that it requires the
applicant to submit a survey/plan showing (1) the width of
mapped Wiman Place and the width of the widening portion
of the street at the above referenced location and (2) a 32-ft.
wide sewer corridor in the bed of Wiman Place along Lot 205
for the installation, maintenance, and/or reconstruction of the
future 10-inch diameter sanitary sewer and the 12-inch/15-
inch diameter storm sewer; and

WHEREAS, in response to DEP’s request, the applicant
submitted a drawing showing a 32-ft. wide sewer corridor in
the bed of Wiman Place along Lot 205 for the installation,
maintenance and or reconstruction of the future 10-inch
diameter sanitary sewer and the 12-inch/15-inch diameter
sewer; and

WHEREAS, by letter dated November 26, 2013, DEP
states that, based on the drawing submitted by the applicant, it
has no objection to the proposed application; and

WHEREAS, by correspondence dated June 10, 2013,
the Department of Transportation (“DOT”) requested that the
applicant provide the following information on its site plan:
(1) sidewalks fronting Sylvaton Terrace and Wiman Place,
with suggested widths of 5 feet for Sylvaton Terrace and a
minimum width of 5 feet for the easterly concrete portion of
the proposed 10-ft. sidewalk on Wiman Place; (2) the
proposed vehicular ramp in compliance with zoning
requirements and relocated to accommodate the sidewalk on
Sylvaton Terrace; (3) the proposed street trees located at least
35 feet from street intersections; and (4) the jurisdiction of the
built roadway within the mapped street, right-of-way; and

MINUTES

WHEREAS, in response to DOT's request, the applicant submitted a revised site plan with a 5-ft. wide sidewalk along Sylvaton Terrace, a 5-ft. wide sidewalk along Wiman Place, the proposed vehicular ramp in compliance with zoning requirements and relocated to accommodate the sidewalk on Sylvaton Terrace, a notation about the jurisdiction of the built roadway within the mapped street right of way, and noted that because of the sidewalk configuration, street trees will be provided off -site; and

WHEREAS, by letter dated December 18, 2013, DOT states that according to the Staten Island Borough President's Topographical Bureau, Wiman Place between Sylvaton Terrace and Church Lane is a mapped street to a 60-ft. width on the Final City Map; and

WHEREAS, DOT notes that the City does not have title to the mapped street, but there is a Corporation Counsel Opinion of Dedication, dated March 8, 1985, for 14 to 15 feet as in use, on the easterly portion of Wiman Place (known as Church Lane); and

WHEREAS, DOT also notes that the improvement of Wiman Place at this location (Block 2827, Lot 207) is not presently included in DOT's Capital Improvement Program; and

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

Therefore it is Resolved, that the decision of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application No. 520118596, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked "Received January 13, 2014" (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations will be complied with; and *on further condition*:

THAT the building will be fully sprinklered and provided with interconnected smoke alarms in accordance with BSA approved plans;

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution, including planting strip requirements;

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

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

Adopted by the Board of Standards and Appeals on January 14, 2014.

41-11-A

APPLICANT – Eric Palatnik, P.C., for Sheryl Fayena, owner.

SUBJECT – Application April 12, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R-6 zoning district. R4 Zoning District.

PREMISES AFFECTED – 1314 Avenue S, between East 13th and East 14th Streets, Block 7292, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

143-11-A thru 146-11-A

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department's determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district. PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for Adjourned hearing.

68-13-A

APPLICANT – Bryan Cave LLP, for ESS PRISA LLC, owner; OTR 330 Bruckner LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. M3-1 zoning district.

PREMISES AFFECTED – 330 Bruckner Boulevard, Bruckner Boulevard between E. 141 and E. 149 Streets, Block 2599, Lot 165, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to January 28, 2014, at 10 A.M., for deferred decision.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of

MINUTES

Buildings' to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

191-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for McAllister Maritime Holdings, LLC, owner.

SUBJECT – Application June 28, 2013 – Proposed construction of a three-story office building within the bed of a mapped street, pursuant to Article 3 of General City Law 35. M3-1 zoning district.

PREMISES AFFECTED – 3161 Richmond Terrace, north side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

287-13-A & 288-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for BIRB Realty Inc., owner.

SUBJECT – Application October 15, 2013 – Proposed construction of a building that does not front on a legally mapped street, contrary to General City Law Section 36. R3X SRD district.

PREMISES AFFECTED – 525 & 529 Durant Avenue, north side of Durant Avenue, 104-13 ft. west of intersection of Durant Avenue and Finlay Avenue, Block 5120, Lot 64, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings' determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 25,

2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

16-12-BZ

CEQR #12-BSA-070K

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district. PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 3, 2012, acting on Department of Buildings Application No. 320416867, reads in pertinent part:

Proposed school building cannot be built in M1-2 zoning district, as per Section 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-2 zoning district, the construction of a three-story Use Group 3 school, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012, October 16, 2012, January 15, 2013, and April 23, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, primarily based on concerns regarding traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, expressing particular concerns about its impact on traffic and parking, and about its estimates regarding the number of buses anticipated based on the projected size of the student body; and

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

WHEREAS, the application is brought on behalf of the

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Congregation Adas Yereim (the "School"), a not-for-profit girls' school; and

WHEREAS, the subject site is located at the northwest intersection of Nostrand Avenue and Willoughby Avenue; it comprises Tax Lots 42 and 53; the site has 119.75 feet of frontage along Willoughby Avenue and 200 feet of frontage along Nostrand Avenue with a lot area of 21,481 sq. ft.; and

WHEREAS, Lot 42 is currently occupied by a one-story commercial building with 20,000 sq. ft. of floor area (1.00 FAR); Lot 53 is vacant; and

WHEREAS, the applicant proposes to demolish the existing building and construct a Use Group 3 school with three stories, 55,509 sq. ft. of floor area (2.58 FAR) and a building height of 48 feet; and

WHEREAS, the applicant notes that on January 13, 2009, under BSA Cal. No. 46-08-BZ, the School obtained a bulk variance to construct a six-story new building with 39,361 sq. ft. of floor area at 491 Bedford Avenue, Brooklyn; however, the building was never constructed and the School has endeavored to find a suitable site for its needs since 2009; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-2 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that the proposal will meet the School's programmatic needs; and

WHEREAS, the applicant represents that, currently, the School has 180 pre-kindergarten and kindergarten students, 273 first through eighth grade students, and 91 high school students, for a total of 544 students distributed throughout the School's existing facilities at 563 Bedford Avenue, 505 Bedford Avenue and 185 Wilson Street; and

WHEREAS, the applicant states that the School's program includes classroom instruction, a head start program for children from low-income families, social service programs, child care, developmental services and health and nutritional guidance; in addition, the School holds monthly assemblies for drama and song and dance groups, and has daily programs focusing on social skills, competitive Yiddish spelling, sewing, art, home economics, gymnastics and sports; and

WHEREAS, the applicant states that the new building will include an auditorium in the cellar, a lunch room, a kitchen, offices and an auditorium on the first story, classrooms, teachers' offices and a 2,145 sq. ft. outdoor play area for younger children on the second story, classrooms and teachers' offices on the third story, and a rooftop activity space for older children; and

WHEREAS, the applicant states that the new building will serve an estimated 750 students and 130 staff members; and

WHEREAS, the applicant notes that approximately 75 percent of its students live within one mile of the site; and

WHEREAS, the applicant represents that it conducted an approximately six-month search within the neighborhood and surrounding areas with the following site criteria: (1) a site with a lot area of between 7,000 and 20,000 sq. ft.; and (2) a minimum of 50,000 sq. ft. of floor area as-of-right; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of six nearby sites in Brooklyn: 55 Hope Street, 829 Kent Avenue, 520 Park Avenue, 240-246 Lynch Street, 1005 Bedford Avenue and 135 Middleton Street; the applicant notes that Use Group 3 is permitted as-of-right on each of the sites except 829 Kent Avenue and 520 Park Avenue, which are located in M1-1 zoning districts; and

WHEREAS, the applicant represents that each site was unsuitable for the School, in that: 55 Hope Street was too expensive for the School to purchase; 829 Kent Avenue and 520 Park Avenue had existing buildings that were too small to accommodate the School's programmatic needs; 240-246 Lynch Street had insufficient lot area to accommodate the School's programmatic needs in that it would not have allowed the construction of a building containing all grade levels; 1005 Bedford Street and 135 Middleton Street had similarly insufficient lot area; and 1005 Bedford Street was not for sale but for rent; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located directly across the street from an R6 zoning district, less than 100 feet to the east and to the south, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states the uses immediately adjacent to the site are: a Use Group 6 office building, two low-rise residential buildings and the neighborhood's only true manufacturing building, a metal stamping operation, at 151 Sandford Street; and

WHEREAS, the applicant notes that although the site is zoned M1-2, the surrounding area is predominantly characterized by brownstone-style townhouses, mixed-use residential and commercial buildings, schools and other community facilities; and

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WHEREAS, during the hearing process, the Board raised concerns about traffic, noise attenuation and air quality due to the proximity of manufacturing uses; and

WHEREAS, in response, the applicant submitted the results of a traffic study, which concluded that because the site and approximately 67 percent of the School's students live on the south side of the Brooklyn-Queens Expressway ("BQE"), buses will continue to operate along the same streets and avenues as they currently do (while transporting the students from south of the BQE to the School's three existing sites, which are north of the BQE); and

WHEREAS, further, the applicant represents that bus drivers will not idle in front of the site except during loading and unloading and will park in the facility located at 60 Nostrand Avenue; and

WHEREAS, as to noise, the applicant also represents that an eight-foot wall will be constructed between the playground and the chiller at 151 Sandford Street in order maintain acceptable outdoor noise levels; and

WHEREAS, the applicant also represents that the exterior of the building will be constructed of masonry walls and double-paned glass, which will adequately insulate the students from any noise created by the surrounding area, including the existing noises emanating from 151 Sandford Street, and any anticipated traffic noises due to the School's busing; such materials will provide at least 31 dBA of attenuation and interior noise levels will be at 45 dBA or less; and

WHEREAS, as to air quality, the applicant's consultant concluded that there are no known air quality, air toxic or HVAC impacts and no major sources of such impacts within 1,000 feet of the site; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the site can be controlled so as to protect children traveling to and from the School, in that: (1) there will be safety personnel on site to assist students when they arrive and depart; (2) two teachers will coordinate unloading and loading of each elementary school bus and three teachers will coordinate each pre-school bus; (3) there will be sufficient space in front of the School for four buses to queue and unload along Nostrand Avenue; and (4) the removal of parking from Nostrand Avenue to accommodate an express bus service will enhance safety by creating a no-traffic zone; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated March 1, 2012, DOT

states that it has no objection to the proposal and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; as noted above, the School's impact on traffic will be minimal and will be mitigated by: (1) the creation of an express bus service along Nostrand Avenue, which will eliminate street parking and facilitate improved bus service, loading and unloading; and (2) the School's representation that buses will park offsite, rather than idling, when not they are not engaged in loading and unloading students; and

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

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 12BSA070K, dated January 9, 2014; and

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

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

WHEREAS, DEP reviewed and accepted the October 2012 Remedial Action Plan and the October 2012 site-specific Construction Health and Safety Plan; and

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

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that no

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significant stationary source air quality impacts to the proposed project are anticipated with respect to existing HVAC sources, future cogeneration units on 156 Sandford Street, or air toxics emissions at nearby buildings; and

WHEREAS, DEP reviewed the results of noise monitoring and the design measures proposed by the consultant in the October 2013 noise study, including an alternate means of ventilation to be provided to maintain a closed window condition, and concurred they would provide sufficient window-wall attenuation levels to achieve an interior noise level of 45 dBA or less; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow, on a site in an M1-2 zoning district, the construction of a three-story Use Group 3 school, contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 10, 2014" – (11) sheets and *on further condition*:

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

THAT the school will be limited to 55,509 sq. ft. of floor area (2.58 FAR) and a building height of 48 feet;

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

THAT interior noise levels will be maintained at 45 dBA or below within the School in accordance with the noise attenuation notes on the BSA-approved plans;

THAT bus drivers will not idle in front of the building, the School or the site;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

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

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

254-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Salmar Properties, LLC, owner.

SUBJECT – Application August 20, 2013 – Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 850 Third Avenue aka 509/519 Second Avenue, bounded by Third Avenue, unmapped 30th Street, Second Avenue, and unmapped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4
Absent: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 19, 2012 acting on Department of Buildings Application No. 3200499607, reads in pertinent part:

Proposed Use Group 10A in M3-1 for first and second floor is contrary to ZR 42-12; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M3-1 zoning district, the conversion of portions of the first and second floors of an existing eight-story manufacturing building to retail use with more than 10,000 sq. ft. of floor area per establishment (Use Group 10A), contrary to ZR § 42-12; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 19, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 7, Brooklyn, recommends approval of the application; and

WHEREAS, United States Congresswoman Nydia M. Velazquez, United States Congressman Michael Grimm, and Councilperson Sara Gonzalez provided testimony in support of the application; and

WHEREAS, the subject site is the entire block bounded by Second Avenue, 30th Street, Third Avenue, and 31st Street; the site is located within an M3-1 zoning district; and

WHEREAS, the site has 200.33 feet of frontage along both Second Avenue and Third Avenue, 700 feet of frontage along both 30th Street and 31st Street, and 140,231 sq. ft. of lot area; and

WHEREAS, the site is occupied by an eight-story manufacturing building with approximately 1,117,166.8 sq.

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ft. of floor area (8.0 FAR); and

WHEREAS, the applicant states that the building was constructed by the United States Government in approximately 1918 and was used as a storage facility for the United States Navy from 1918 until around 2000, when it became vacant; ownership of the building was then transferred to the New York City Economic Development Corporation, which issued a request for proposals to redevelop the building; the applicant's response to the RFP was selected and it took ownership of the building in 2011; and

WHEREAS, the applicant notes that it purchased the building subject to deed restrictions regarding the redevelopment of the building, including: development shall be "primarily for light industrial uses," "excluding passive warehouse and/or storage," and shall include "complete roof replacement or restoration," "façade restoration," installation of "utilities, mechanical and life safety systems distributed throughout the entire building" and "at least one bank of elevators," and may include "up to 15 percent of rentable floor area . . . for retail uses"; in addition, according to the deed, the building must be made to comply with the 2008 Construction Codes prior to re-occupancy; and

WHEREAS, the applicant proposes to convert the building from storage throughout to retail (Use Group 10A) on portions of the first and second floors, and manufacturing (Use Group 17) on portions of the first and second floors and all of the third through eighth floors; the retail use will occupy 62,614.8 sq. ft. of floor area on the first floor and 104,972 sq. ft. of floor area on the second floor, for a total retail floor area of 167,586.8 sq. ft., which represents 15 percent of the total floor area of the building (1,117,166.8 sq. ft.); the manufacturing use will occupy the remaining 949,580 sq. ft. throughout the building; finally, the applicant proposes to reserve no fewer than 368 parking spaces and up to 16 loading berths for the proposed uses on the block directly south of the subject site (Block 675, Lot 10), which is separated from the site by unmapped 31st Street; and

WHEREAS, because, per ZR § 42-12, Use Group 10A retail uses are limited to 10,000 sq. ft. of floor area per establishment within the subject M3-1 district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are the site's unique physical conditions, which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: the existing building's obsolete characteristics, including its column spacing, archaic layout, and absence of modern building systems; the historic significance of the building; and the site's limited street access; and

WHEREAS, the applicant states that the building is obsolete for its original purpose; as noted above, the building was constructed in 1918 by the federal government and used by the United States Navy as a storage facility until 2000; as such, it was built to carry substantial loads on every floor (it contains 331 structural columns per floor, with columns

located approximately every 20 feet) and to be able to efficiently catalog, distribute, and retrieve stored materials; and

WHEREAS, the applicant asserts that the ubiquitous columns hamper the use of the building for as-of-right uses; specifically, for manufacturers, the columns form narrow maneuvering lanes that inhibit the use of trucks, forklifts, pallet jacks, and hand jacks, making the space inefficient and difficult to market; for retailers, the column condition interferes with the presentation of merchandise and reduces the amount of usable floorspace, making the 10,000 sq. ft. limitation particularly burdensome; and

WHEREAS, the applicant represents that the building's systems are outmoded and in disrepair, and that, aside from its structural elements, the majority of the building is not salvageable and must be replaced and rebuilt in accordance with modern, local standards; and

WHEREAS, the applicant asserts that the building's vacancy for the past 13 years supports the conclusion that it is no longer useful as a storage facility (and, indeed, not permitted to be used for storage under the deed restrictions); and

WHEREAS, similarly, although the majority of the building (85 percent of the floor area) is proposed to be light manufacturing, the tenant spaces for such use are not ideal for typical modern manufacturers, which desire ground-level, unimpeded floorplates for their materials and equipment; as such, the light manufacturing must be offered at discounted rents and offset with the higher rents associated with retail use; and

WHEREAS, the applicant states that renovating the 96-year-old building poses unique challenges due to the building's size and the deed requirement to comply with the 2008 Construction Codes; and

WHEREAS, the applicant notes that the building is uniquely large in comparison to neighboring buildings; in particular, the applicant represents that of the 35 sites on the 13 nearest blocks, there are only eight buildings that have more than 100,000 sq. ft. of floor area and only one of the eight, the federal detention center located at 830 Third Avenue, is comparable in size (902,000 sq. ft.) to the subject building, which has over one million square feet of floor area; and

WHEREAS, the applicant states that, unlike other large existing buildings in the study area, only the subject building must be made to comply with the 2008 Construction Codes in order to be reoccupied; typically, buildings of this size from this era would be able to utilize earlier versions of the New York City Building Code to make changes to the building; accordingly, this building's renovations will be more extensive and more expensive than similar buildings in the neighborhood; and

WHEREAS, as to the historic character of the building, the applicant states that it is considered eligible to be listed in the National Register of Historic Places due to its historic use and appearance, and that its restoration and preservation are restrictions of the deed; as such, the

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applicant must undertake extensive work including: reconstruction of portions of the façade to match historic conditions; door and window replacement to historic-replacement standards; installation of non-permanent ramps (so as to preserve historic appearances), and installation of historically appropriate lighting; and

WHEREAS, to support its claim of hardship, the applicant submitted a detailed analysis of the costs of achieving code compliance and historic preservation of the building; and

WHEREAS, similarly, the applicant states that the limited street access of the building is a unique condition that creates a practical difficulty operating an as-of-right use; and

WHEREAS, specifically, the applicant represents that the building fronts on two unmapped streets (30th Street and 31st Street), one of which (30th Street) is built out but under the control of the federal detention facility center and not open to the public and the other of which (31st Street) is located entirely within Block 675, Lot 10; therefore, the applicant asserts that neither 30th Street, nor 31st Street may be used to access the site as-of-right; and

WHEREAS, the applicant also states that the site does not have any existing access points (curb cut or building entrances) along Second Avenue and its existing façade cannot be altered (due to deed restrictions) to reorient the building to have its main frontage on Second Avenue; thus, the building and the site are generally accessible only via Third Avenue in an as-of-right scenario; and

WHEREAS, as a result, a small retail use (one with less than 10,000 sq. ft. of floor area, per ZR § 42-12) with frontage solely on Second Avenue, 30th Street or 31st Street would be largely invisible to its potential customers and difficult to access, making such a space less attractive to tenants and therefore less valuable; and

WHEREAS, the applicant asserts that such limited access to the public street is unique in the surrounding area, and it supported this assertion with an analysis of the ten large buildings (100,000 sq. ft. or more of floor area) within 1,500 feet of the site and their access points; based on the analysis, only the site has one access point; of the other nine sites, one site has two access points, three sites have three access points, three sites have four access points, one site has five access points, and one site has six access points; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) an as-of-right manufacturing and retail building with retail use limited to 10,000 sq. ft. per establishment; (2) an as-of-right manufacturing building with no retail use; (3) a lesser variance in which only the first floor is permitted to exceed the 10,000 sq.-ft.-per-retail establishment limitation; and (4) the proposal; and

WHEREAS, the applicant concluded that only the

proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the following: (1) its justification for the mortgage rate assumed in the financial analysis; and (2) the infeasibility of constructing a series of small retail spaces; and

WHEREAS, in response, the applicant's consultant indicated that the assumed mortgage rate is based on a 2013 survey of interest rates and is within the range for industrial rents, though on the higher end to reflect the risks of the project, which include the size of the site and its location, and the condition of the existing building and its required renovations; and

WHEREAS, as for demonstrating the impracticality of a series of small retail spaces, the applicant provided plans showing that breaking up the retail space will adversely affect retail signage, visibility, accessibility, which the applicant states are critical business elements for retailers; and

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

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area, which is west of Third Avenue and the Gowanus Expressway, is characterized by a predominance of medium-density manufacturing buildings; the applicant notes that the subject area is distinct from the area east of the Gowanus Expressway, where uses are more diverse and include low- to medium-density residential, commercial, and manufacturing uses; and

WHEREAS, as for the immediately adjacent sites, the applicant states that, as noted above, there is a federal detention facility directly north of the site on Block 667, Lot 1, and a large parking lot directly south of the site on Block 675, Lot 10, which will provide loading berths and parking for the retail and manufacturing uses at the site; and

WHEREAS, the applicant states that west of the site across Second Avenue is a waterfront superblock (Block 662, Lot 1) of low-rise commercial buildings, parking and storage areas owned and operated by the Department of Small Business Services; east of the site across the Gowanus Expressway and Third Avenue, is Block 672, which includes an array of low-rise manufacturing, commercial, and residential buildings; and

WHEREAS, as to bulk, the applicant states that although the 8.0 FAR of the building is well in excess of the maximum permitted FAR in the subject M3-1 district (2.0 FAR), the building was constructed by the federal government (which is not subject to the Zoning Resolution) and, more importantly, has existed at the sight for nearly 100

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years; further, the applicant states that neither the envelope, nor the floor area of the building will change under the proposal; and

WHEREAS, the applicant notes that the site lies within an Industrial Business Zone and that its proposed use of 85 percent of the building's floor area for manufacturing uses is consistent with that designation; likewise, the applicant asserts that the proposed retail uses will complement (rather than duplicate) local commercial uses and add up to 1,300 jobs to the local economy; and

WHEREAS, at hearing, the Board directed the applicant to clarify how the parking and loading facilities will be preserved given that the facilities are located on a separate zoning lot; and

WHEREAS, in response, the applicant provided a copy of a recorded restrictive declaration, which requires the owner of Block 675, Lot 10 (and its successors and assigns) to provide for the site no fewer than 368 parking spaces and up to 16 loading berths; and

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

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from the peculiarities of the existing building on the lot and the site's limited street access; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.2 and 617.6 of 6NYCRR; 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. 13BSA021K, dated January 10, 2014; and

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

WHEREAS, the New York City Department of

Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential air quality impacts; and

WHEREAS, DEP reviewed the applicant's January 2014 mobile sources air quality analyses and determined that no significant adverse air quality impacts from the proposed project are anticipated; and

WHEREAS, the New York City Department of Transportation's ("DOT") Division of Traffic and Planning reviewed the project for potential traffic impacts; and

WHEREAS, the applicant identified in the 2013 EAS and Traffic Study proposed traffic improvement measures which would be implemented as part of the proposed action at the following intersections:

39th Street (E-W) and Second Avenue (N-S):

During the weekday midday peak hour, shift three seconds of green time from the northbound/southbound phase to the eastbound/westbound phase; during the weekday PM peak hour shift four seconds of green time from the westbound phase (Gowanus Expressway Exit Ramp) and allocate two seconds to the northbound/southbound phase (Second Avenue) and two seconds to the eastbound/westbound phase; and during the Saturday midday peak hour shift four seconds of green time from the westbound phase (Gowanus Expressway Exit Ramp) to the eastbound/westbound phase;

33rd Street (E-W) and Fourth Avenue (N-S): During the Saturday midday peak hour shift one second of green time from the northbound/southbound phase to the eastbound/westbound phase;

20th Street (E-W) and Fourth Avenue (N-S): During the Saturday midday peak hour shift two seconds of green time from the eastbound/westbound phase to the northbound/westbound phase;

33rd Street (E-W) and Third Avenue: Restripe eastbound 33rd Street between northbound and southbound Third Avenue as two 15-foot travel lanes – one through lane and one left-turn lane; and

WHEREAS, DOT reviewed these measures and determined they were reasonable and feasible; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to

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permit, on a site within an M3-1 zoning district, the conversion of portions of the first and second floors of an existing eight-story manufacturing building to retail use with more than 10,000 sq. ft. of floor area per establishment (Use Group 10A), contrary to ZR § 42-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 6, 2013" – (8) sheets; and *on further condition*:

THAT the retail use will be limited to 62,614.8 sq. ft. of floor area on the first floor and 104,972 sq. ft. of floor area on the second floor, for a total retail floor area of 167,586.8 sq. ft.;

THAT loading berths and a minimum of 368 parking spaces will be provided on Block 675, Lot 10;

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

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

THAT this approval is subject to DOT investigating the need for implementing the proposed improvements as described above or similar measures when the building is completed;

THAT the applicant will notify DOT six months prior to the opening of the proposed building;

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

262-12-BZ

CEQR #13-BSA-028Q

APPLICANT – Patrick W. Jones, P.C., for Canyon & Cie LLC c/o Mileson Corporation, owner; Risingsam Management LLC, lessee.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit a hotel (UG 5), contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 132-10 149th Avenue aka 132-35 132nd Street, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot 12 and 21, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4
Absent: Commissioner Ottley-Brown.....1
Negative:.....0

WHEREAS, the decision of the Queens Borough Commissioner, dated August 6, 2012 acting on Department of Buildings Application No. 420571189, reads in pertinent part:

Use Group 5 (hotel) is not permitted in M2-1 zoning district, per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M2-1 zoning district, the construction of a four-story building to be occupied as a transient hotel (Use Group 5) with 101 rooms, and an accessory parking lot with six spaces, which does not conform with the use regulations pursuant to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 26, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 10, Queens, recommends disapproval of the application, asserting that the essential character of the neighborhood is residential and industrial and that the applicant failed to demonstrate that an as-of-right use does not provide a reasonable return; and

WHEREAS, the subject site is a triangular block bounded by 132nd Street, 149th Avenue, and 150th Avenue (a/k/a the Nassau Expressway Service Road) and comprising Tax Lots 12 and 21, within an M2-1 zoning district; and

WHEREAS, the site has 132.16 feet of frontage along 132nd Street, 216.1 feet of frontage along 149th Avenue, 254.9 feet of frontage along the Nassau Expressway Service Road, and 14,280.05 sq. ft. of lot area; and

WHEREAS, the applicant states that, at present, the site is used as a parking lot for shuttle vans operated by the nearby Hilton Garden Inn; and

WHEREAS, the applicant notes that, historically, the site was part of a larger tract of land that contained a sewage treatment facility; the applicant also notes that the Board previously denied bulk variances (maximum building height within two miles of an airport) pursuant to the 1916 Zoning Resolution under BSA Cal. Nos. 1907-61-BZ and 1928-61-BZ; and

WHEREAS, the applicant proposes to construct a four-story hotel (Use Group 5) with a wall height of 45'-6", 28,533 sq. ft. of floor area (2.0 FAR) and 101 rooms; the applicant notes that the maximum FAR for uses permitted as-of-right in the subject M2-1 district (and in the adjacent M1-2 district) is 2.0; and

WHEREAS, because Use Group 5 is not permitted as-of-right in the subject M2-1 district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the site's triangular shape; and (2) contamination of the soil with hazardous materials; and

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WHEREAS, the applicant states that the triangular shape of the site is a unique physical condition that impairs its ability to develop the site for a conforming use; and

WHEREAS, the applicant states that, based on historical Sanborn maps, the triangular shape of the site results from the construction of the Nassau Expressway in the 1960s, which formed the triangular site's hypotenuse and separated the site from its historic block; and

WHEREAS, as to the uniqueness of the triangular shape, the applicant states that there is only one other triangular lot (Block 11900, Lot 75) in the study area (the area bounded by 130th Street, 130th Place, the Belt Parkway, the Nassau Expressway, and 134th Street); however, the applicant states Block 11900, Lot 75 is distinguishable because it is more than three times the size of the subject site (53,125 sq. ft. of lot area versus 14,280.05 sq. ft. of lot area); and

WHEREAS, as to the hardship created by the triangular shape, the applicant states that the lot shape results in two equally undesirable as-of-right scenarios: (1) a triangular manufacturing building; and (2) a rectangular manufacturing building; and

WHEREAS, the applicant states that a triangular building is inherently inefficient due to its acute angles, which form sharp corners that are unsuitable for manufacturing uses; the applicant notes that manufacturing and commercial buildings are nearly universally rectangular in shape in order to accommodate shelving, boxes, office space, and other standard-sized machinery and equipment that cannot be easily modified; and

WHEREAS, the applicant states that constructing a rectangular building with sufficient floor space would require constructing multiple floors with vertical transportation; the applicant asserts that constructing vertical transportation is both expensive and generally undesirable for modern manufacturers, which prefer to have operations at ground level; and

WHEREAS, as to the contamination, the applicant states that a Phase II site investigation revealed the presence of certain volatile organic compounds, semi-volatile organic compounds, metals, and pesticides, owing to the historical use of the site as a sewage treatment facility; and

WHEREAS, the applicant states that remediation of these contaminants will require soil disposal, clean fill replacement, and the creation of a vapor barrier, at significant cost; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) an as-of-right triangular manufacturing building with two stories, 28,501 sq. ft. of floor area (2.0 FAR), and a floorplate of 14,560 sq. ft.; (2) an as-of-right rectangular manufacturing building with four stories, 28,485 sq. ft. of floor area (1.99 FAR), and a

floorplate of 7,700 sq. ft.; (3) an as-of-right rectangular manufacturing building on a conceptual rectangular lot with two stories, 28,479 (1.99 FAR), and a floorplate of 14,540 sq. ft.; and (4) the proposal; and

WHEREAS, the applicant concluded that, other than the scenario involving the conceptual rectangular lot, only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the calculation of costs associated with the excavation of the contaminated soil and to explain why the nearby hotels were not included as comparators for the applicant's financial analysis; and

WHEREAS, in response, the applicant submitted a revised financial analysis delineating excavation costs; as to the hotels used as comparators, the applicant explained that the nearby hotels (the Sheraton and the Hilton Garden Inn) offer more amenities than the proposed hotel, and, as such, command higher rates and are not comparable to the proposal; and

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

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that although the site is designated as an Industrial Business Zone, the immediate area is characterized by a mix of commercial, community facility, and industrial uses, and major thoroughfares including the Belt Parkway, South Conduit Avenue, and the Nassau and Van Wyck Expressways; and

WHEREAS, the applicant represents that there are two other hotels within 400 feet of the site and that there are 18 hotels within the greater area surrounding John F. Kennedy International Airport, which lies to the south and east of the site; and

WHEREAS, as for the immediately adjacent sites, the applicant states that a homeless shelter ("Skyway Family Center"), a Sheraton hotel, and a Hilton Garden Inn occupy the block immediately north of the site, a highway salt storage area (covered by a tarpaulin) occupies the block immediately to the south of the site; to the west of the site are a catering facility and a rental car facility; and

WHEREAS, the applicant notes that the site is within the only portion of the subject M3-1 district that is north and west of the Nassau Expressway, and that immediately north and west of the site is an M1-2 district, where less intense manufacturing uses predominate and where the proposed hotel would be permitted as-of-right; and

WHEREAS, according to the original design, the main entrance for the hotel was to be located on the 149th Avenue frontage; and

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WHEREAS, in response to the Community Board's concerns about the compatibility of the entrance with the Skyway Family Center, the applicant revised the design so that the main entrance of the hotel is located on the 150th Avenue frontage; and

WHEREAS, as to bulk, the applicant states, as noted above, that the proposal complies with the maximum 2.0 FAR permitted in the subject M2-1 district, as well as all other bulk regulations; and

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

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from its triangular shape (as created by the building of the Nassau Expressway) and its contamination, whose source is indeterminable; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.2 and 617.6 of 6NYCRR; 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. 13BSA028Q, dated January 6, 2014; and

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

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

WHEREAS, DEP reviewed and accepted the September 2013 Remedial Action Plan and the site-specific Construction Health and Safety Plan; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M2-1 zoning district, the construction of a four-story building to be occupied as a transient hotel (Use Group 5) with 101 rooms, and an accessory parking lot with six spaces, which does not conform with the use regulations pursuant to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 13, 2013" – (12 sheets; and *on further condition*:

THAT the following will be the bulk parameters of the Proposed Building: four stories, a wall height of 45'-6", 28,533.46 sq. ft. of floor area (2.0 FAR), a maximum of 101 hotel rooms, and six parking spaces;

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

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

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

THAT this grant is contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; and

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

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120-13-BZ

CEQR #13-BSA-129R

APPLICANT – Eric Palatnik, P.C., for Okun Jacobson & Doris Kurlender, owner; McDonald’s Corporation, lessee.

SUBJECT – Application April 25, 2013 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald’s*) with an accessory drive-through facility. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, north side of Forest Avenue, 100’ west of intersection of Forest Avenue and Morningstar Road, Block 1180, Lots 6 and 49, Borough of Staten Island.

COMMUNITY BOARD #ISI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated March 27, 2013, acting on Department of Buildings Application No. 520133105, reads:

Eating or drinking establishment with accessory drive-through facility is not permitted in C1 district; contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-1 (R3-2) zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on September 10, 2013, with continued hearings on October 22, 2013 and November 26, 2013, and then to decision on January 14, 2014; and

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

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

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about noise due to the 24-hour operation of the establishment and late-night garbage collection, and about traffic; and

WHEREAS, the subject site is an irregularly-shaped zoning lot comprising Tax Lots 6 and 49, with frontages on the north side of Forest Avenue and the west side of Morningstar Road, within a (C1-1) R3-2 zoning district; and

WHEREAS, the site has 125 feet of frontage along Forest Avenue, 169.5 feet of frontage along Morningstar Road, and a lot area of 42,788 sq. ft.; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated by McDonald’s) with 4,410 sq. ft. of floor area (0.1 FAR), an accessory drive-through, and 62 accessory parking spaces; and

WHEREAS, the Board previously exercised jurisdiction over the site when, under BSA Cal. No. 808-94-BZ, it granted a special permit to legalize an existing accessory drive-through for a term of five years, to expire on June 3, 2002; and

WHEREAS, the applicant now seeks to obtain a new special permit for an accessory drive-through in connection with its redevelopment of the site, which will include a new, one-story McDonald’s building with 4,219 sq. ft. of floor area (0.09 FAR), a reconfiguration of the site circulation, and a reduction in the number of accessory parking spaces from 62 spaces to 42 spaces (a minimum of 26 parking spaces are required, per ZR § 36-21); and

WHEREAS, a special permit is required for the proposed accessory drive-through facility in the C1-1 (R3-2) zoning district, pursuant to ZR § 73-243; and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for at least 13 vehicles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant states that the site has three curb cuts, two on Forest Avenue, a heavily-trafficked thoroughfare, and one along Morningstar Road, and that each curb cut is located a sufficient distance from any intersection and will not adversely affect traffic flow on the streets; and

WHEREAS, in addition, the applicant represents that the proposed reconfiguration of the site increases the reservoir spaces for vehicles using the drive-through, which will further improve the overall traffic flow of the site; and

WHEREAS, the applicant notes that an eating and drinking establishment has existed at the site since at least the mid-1970s and that a drive-through has operated since the mid-1990s; therefore, the drive-through is well-established in the neighborhood and will not create new traffic patterns in the vicinity; and

WHEREAS, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-1 (R3-2) zoning district; as noted above, the proposed 42 parking spaces is well in excess of the 26 parking spaces required under ZR § 36-21; and

WHEREAS, the applicant represents that the facility

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conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant states that Forest Avenue is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores, supermarkets, banks, offices and retail stores; in addition, the portion of Morningstar Road on which the site fronts is a two-way street that includes retail uses, and

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

WHEREAS, the Board notes that the applicant has submitted photographs of the site and the surrounding streets, which supports this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that most of the surrounding properties are occupied by commercial uses; and

WHEREAS, the applicant notes that while there are nearby residential uses, they are located to the north and west of the site, whereas the restaurant and the majority of its parking, are located on the southern and eastern portions of the site; likewise, the applicant states that the menu board for the drive-through will be located approximately 47 feet from the nearest residence's lot line; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-through and the nearby residences in the form of a fence, trees, shrubs, and planting beds; and

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

WHEREAS, the applicant represents that the community is not adversely impacted by the legalization and modification of the existing drive-through; and

WHEREAS, the applicant states that the restaurant is well-established in the neighborhood and has existed with a drive-through for approximately 20 years; and

WHEREAS, the applicant notes that the drive-through window does not increase the number of vehicular visits to the site but rather decreases the amount of time that restaurant patrons spend at the site; and

WHEREAS, at hearing, the Board raised concerns about the enclosure of the dumpsters, the late-night garbage collection, the 24-hour operation of the drive-through, and the lack of directional signage and striping in the parking lot; and

WHEREAS, in response, the applicant submitted amended plans showing a masonry enclosure of the dumpsters and new directional signage and striping; in addition, the applicant submitted a letter from the proprietor of the McDonald's certifying that the hours of garbage collection would be limited to daily, between 8:00 a.m. and 10:00 p.m.;

and

WHEREAS, as to the 24-hour operation of the drive-through, the applicant asserts that it is essential to the operation of the restaurant; and

WHEREAS, the Board noted at hearing that the five-year term of the special permit will allow for monitoring of the site for compliance with the conditions of the grant; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA129R dated April 24, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within a C1-1 (R3-2) zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2013"- (9) sheets; and *on further condition*:

THAT the term of this grant will expire on January 14, 2019;

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

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage will conform to C1-1 zoning district regulations;

THAT the hours of garbage collection will be limited to daily, between 8:00 a.m. and 10:00 p.m.;

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

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

171-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1034 East 26th Street, LLC, owner.

SUBJECT – Application June 6, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1034 East 26th Street, west side of East 26th Street between Avenue J and Avenue K, Block 7607, Lot 63, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 23, 2013, acting on Department of Buildings Application No. 320729075, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;

3. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required; and

4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

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

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 1,438 sq. ft. (0.36 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 1,438 sq. ft. (0.36 FAR) to 4,016 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 178 percent to 50.7 percent; the minimum required open space is 150 percent; and

WHEREAS, the applicant seeks to maintain the width of one existing side yard (2'-0”) and decrease the width of the other existing side yard from 10'-0” to 8'-0” (the requirement is two side yards with a minimum total width of 13'-0” and a minimum width of 5'-0” each); and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 32'-9½” to 20'-0” (a minimum rear yard depth of 30'-0” is required); and

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

WHEREAS, in particular, the applicant represents that the proposed 1.0 FAR is consistent with the bulk in the surrounding area and submitted an analysis showing that there are ten homes in the immediate vicinity (the subject block and Block 7607, which is immediately west of the subject block) with an FAR of 1.0 or greater; and

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WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 16, 2013"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,016 sq. ft. (1.0 FAR), a minimum open space of 50.7 percent, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 2'-0" and 8'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

**187-13-BZ
CEQR #13-BSA-161X**

APPLICANT – Sheldon Lobel, P.C., for 1030 Southern Boulevard LLC, owner; 1030 Southern Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application June 21, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*), and Special Permit (§73-52) to extend commercial use into the portion of the lot located within a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1024-1030 Southern Boulevard, east side of Southern Boulevard approximately 134' north of the intersection formed by Aldus Street and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 6, 2013, acting on Department of Buildings ("DOB") Application No. 220259119, reads in pertinent part:

Proposed physical culture establishment, is not permitted as-of-right in a C4-4 zoning district, per ZR 32-10;

Proposed extension of physical culture establishment use into R7-1 portion of zoning lot is not permitted per ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C4-4 zoning district and partially within an R7-1 zoning district, the legalization of a physical culture establishment ("PCE") in portions of the first and second floors and mezzanine level of an existing two-story commercial building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing building into the R7-1 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

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

WHEREAS, the subject site is an irregularly-shaped zoning lot with interior lot and through lot portions and located in the mid-block of the block bounded by Aldus Street, Southern Boulevard, Westchester Avenue, East 165 Street, and Hoe Avenue; and

WHEREAS, the site is partially within a C4-4 zoning district and partially within an R7-1 zoning district; and

WHEREAS, the site has approximately 120 feet of frontage along Southern Boulevard, 20 feet of frontage along Hoe Avenue, and a lot area of 26,300 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building that was constructed around 1913 and used as a theater (known as "Lowe's Boulevard Theater") until the 1980s, when it was converted to retail use; and

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WHEREAS, the PCE occupies portions of the first (10,906 sq. ft. of floor area) and second floors (5,085 sq. ft. of floor area), and second floor mezzanine (1,339 sq. ft. of floor area), for a total PCE floor area of 17,330 sq. ft.; and

WHEREAS, the applicant notes that although the Board has not previously exercised jurisdiction over the site, an application similar to the instant application (a request for special permits under ZR §§ 73-36 and 73-52) was filed by another fitness center operator and withdrawn in October 2012; and

WHEREAS, the applicant notes that the PCE has been in operation since July 15, 2013; and

WHEREAS, the PCE is currently operated as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C4-4 portion of the site 25 feet to the east and 25 feet to the south, thereby legalizing the PCE use in the portion of the first floor of the existing building within the R7-1 portion of the site; and (2) pursuant to ZR § 73-36, legalize the PCE use in portions of the first and second floors, and second floor mezzanine of an existing two-story commercial building at the site; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issue of single ownership, the applicant submitted documents reflecting the history of ownership of the subject site and adjoining sites showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 22,005 sq. ft. of the site's 26,300 sq. ft. of lot area (84 percent) is located within a C4-4 zoning district; and

WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R7-1 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is already occupied with a portion of the existing building that is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R7-1 district

does not have access to a public street; as such, absent the requested extension of the PCE into the residential space, a substantial portion of the first floor of the building would be unusable and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R7-1, for a permitted use; and

WHEREAS, as to the extension's effect on the surrounding area, the applicant states that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by commercial and medium-density residential uses; further, the proposed PCE will be entirely within the existing building; and

WHEREAS, the applicant also notes that the PCE does not have any windows on entrances facing the residential district, and that commercial uses have existed at the site for approximately 100 years; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C4-4 zoning district portion of the lot into the R7-1 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-52; and

WHEREAS, turning to the findings for ZR § 73-36, the applicant represents that the services at the PCE include facilities for group training, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be 24 hours per day and seven days per week; and

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

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

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

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

WHEREAS, at hearing, the Board questioned whether the mezzanine was required to be made accessible for persons with certain physical disabilities; and

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible

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because the amenities offered on that level are available on one or more accessible levels of the PCE; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA161X, dated June 21, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C4-4 zoning district and partially within an R7-1 zoning district, the legalization of a physical culture establishment (“PCE”) in portions of the first and second floors and mezzanine level of an existing two-story commercial building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing building into the R7-1 portion of the zoning lot; *on condition* that all work will substantially conform to drawings filed with this application marked “September 5, 2013” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 15, 2023;

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

THAT any massages will be performed only by New York State licensed massage professionals;

THAT the bulk parameters of the building will be as follows: 2,443.75 sq. ft. within the R7-1 portion of the lot and 14,886.25 sq. ft. within the C4-4 portion of the lot;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

223-13-BZ

APPLICANT – Stroock & Stroock & Lavan LLP by Ross F. Moskowitz, for NYC Department of Citywide Administrative Services, owner.

SUBJECT – Application July 24, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Kingsbridge National Ice Wellness Center*) in an existing building. C4-4/R6 zoning district.

PREMISES AFFECTED – 29 West Kingsbridge Road aka Kingsbridge Armory Building, Block 3247, Lot 10 part of 2, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez4

Absent: Commissioner Otley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 19, 2013, acting on Department of Buildings (“DOB”) Application No. 220326001, reads in pertinent part:

Proposed physical culture establishment is not permitted as of right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar levels of an existing commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on

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January 14, 2014; and

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

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

WHEREAS, the subject site is the entire block bounded by West Kingsbridge Road, West 195th Street, Jerome Avenue, and Reservoir Avenue; and

WHEREAS, the site has approximately 297,200 sq. ft. of lot area and is occupied by two, two-story commercial buildings occupied by the United States National Guard (“USNG buildings”), and by the Kingsbridge Armory, an individual New York City Landmark, which is also listed on the New York State and National Registers of Historic Places; and

WHEREAS, the applicant represents that it has sought the necessary City Planning Commission approvals to convert the Armory building to indoor ice skating rinks and other retail and commercial spaces; and

WHEREAS, the applicant states that the converted building will be known as the Kingsbridge National Ice Center; and

WHEREAS, the PCE is proposed to occupy approximately 10,000 sq. ft. of floor space on portions of sub-cellar 1 and sub-cellar 2 of the building; and

WHEREAS, the PCE will be operated in connection with the Kingsbridge National Ice Center; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 6:00 p.m.; and

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

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

WHEREAS, the Board notes that, on October 17, 2013, the Landmarks Preservation Commission issued a Binding Report indicating its approval of the proposal; and

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

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

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 13DME013X, dated April 16, 2013; and

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

WHEREAS, 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 adopts the Type I Negative Declaration issued by the Deputy Mayor’s Office prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar levels of an existing commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 18, 2013” – Ten (10) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 14, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

THAT all required City Planning Commission approvals will be obtained;

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

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

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

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

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

THAT the approved plans will be considered approved

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only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for adjourned hearing.

6-12-BZ

APPLICANT – Syeda Laila, owner.

SUBJECT – Application January 13, 2013 – Variance (§72-21) to permit a four-story residential building, contrary to floor area, (§103-211), dwelling unit (§23-22), front yard (§23-46), side yard (§23-46) and height (§23-631) regulations. R4 zoning district.

PREMISES AFFECTED – 39-06 52nd Street aka 51-24 39th Avenue, Block 128, Lot 39, 40, Borough of Queens.

COMMUNITY BOARD #2Q

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

43-12-BZ

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

77-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Goldy Jacobowitz, owner.

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 91 Franklin Ave, 82'-3" south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

299-12-BZ

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for continued hearing.

6-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school (*Yeshiva Ohr Yisrael*), contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

94-13-BZ

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40th Avenue aka 38-78 12th Street, Block 473, Lot 473, Borough of Queens.

COMMUNITY BOARD #1Q

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

154-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

192-13-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.

SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

209-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 12 West 21 Land, O.P., owner.

SUBJECT – Application July 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*NY Physical Training Fitness Studio*) within the existing building, contrary to C6-4-A zoning district.

PREMISES AFFECTED – 12 West 21st Street, between 5th Avenue and 6th Avenue, Block 822, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

220-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yitzchok Perlstein, owner.

SUBJECT – Application July 22, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue J, north side of Avenue J between East 21st and East 22nd Street, Block 7585, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

243-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Henry II Thames LP c/o of Fisher Brothers, owners.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit construction of a mixed use building, contrary to setback requirements (§91-32). C5-5 (LM) zoning district.

PREMISES AFFECTED – 22 Thames Street, 125-129 Greenwich Street, southeast corner of Greenwich Street and Thames Street, Block 51, Lot 13, 14, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

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245-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Gorelik, owner.

SUBJECT – Application August 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47). R4 zoning district.

PREMISES AFFECTED – 2660 East 27th Street, between Voorhies Avenue and Avenue Z, Block 7471, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

249-13-BZ

APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.

SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to allow a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building. C4-3 zoning district.

PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

267-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 689 Fifth Avenue LLC, owner; Fit Life 5th Avenue LLC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*). C5-3 (MID) zoning district.

PREMISES AFFECTED – 689 5th Avenue aka 1 East 54th Street, northeast corner of 5th Avenue and East 54th Street, Block 1290, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown1

ACTION OF THE BOARD – Laid over to February

4, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on October 8, 2013, under Calendar No. 75-13-A and printed in Volume 98, Bulletin Nos. 40-41, is hereby corrected to read as follows:

75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by Ilya Braz, owner.

SUBJECT – Application February 20, 2013 – Appeal of §310(2) of the MDL relating to the court requirements (MDL §26(7)) to allow the conversion of an existing commercial building to a transient hotel. C5-5(LM) zoning district.

PREMISES AFFECTED – 5 Beekman Street, south side of Beekman Street from Nassau Street to Theater Alley, Block 90, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268 reads, in pertinent part:

Proposed conversion of an office building to a Use Group 5 transient hotel does not comply with MDL Section 26(7), in that legally required windows open onto an existing inner court; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from office and adult vocational school uses (Use Groups 6 and 9) to a transient hotel (Use Group 5), contrary to MDL § 26(7); and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, the subject site is a rectangular lot located on the south side of Beekman Street and extending from Theater Alley to Nassau Street, within a C5-5 district within the Special Lower Manhattan District; and

WHEREAS, the site has approximately 100 feet of frontage along Beekman Street, approximately 146 feet of frontage along Nassau Street, approximately 150 feet of frontage along Theater Alley, and a lot area of 14,937 sq. ft.; and

WHEREAS, the site is occupied by a ten-story commercial building that was constructed between 1881 and 1890 and is known as the Temple Court Building and Annex (the “Building”); and

WHEREAS, on February 10, 1998, the Building was designated as an individual landmark by the New York City Landmarks Preservation Commission (“LPC”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004, when, under BSA Cal. No. 383-03-A, the Board authorized the retention of an open, unenclosed access stair contrary to the 1938 Building Code and the MDL in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to residences (Use Group 2); and

WHEREAS, in 2009, another application was filed with the Board, under BSA Cal. No. 12-09-A, seeking MDL and 1938 Building Code waivers in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to transient hotel (Use Group 5); this application was withdrawn on July 19, 2011; and

WHEREAS, the applicant notes that, despite the Board’s action under BSA Cal. No. 383-08-A, the Building was never converted to residential use and has been vacant for many years; and

WHEREAS, the applicant now proposes to convert the Building to a transient hotel use (Use Group 5) with 287 rooms (the “Proposal”); and

WHEREAS, the applicant states that while the proposed use is permitted as-of-right in the underlying zoning district, the Building’s existing inner court, as defined by MDL § 4(32), does not comply with the applicable provisions of the MDL; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered “class B” multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that of the 287 rooms proposed, 32 rooms (11 percent) would have required windows opening onto the existing inner court; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the Building’s existing inner court with a height of 121 feet does not comply with the requirements of MDL § 26(7), in that it has a width of approximately 30’-8¼” and a depth of approximately 16’-

MINUTES

2¾", and an area of 514 sq. ft., but is required, per MDL § 26(7) to have a minimum width of 40'-3" and a minimum depth of 30'-0" and an area of 1,200 sq. ft.; as such, the applicant requests that the Board waive compliance with that provision pursuant to MDL § 310; and

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

WHEREAS, as noted above, the Building was constructed in the 1880s and completed around 1890; therefore it is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant states that, in order for all of the hotel units in the proposed hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), extensive structural work would be required to enlarge the inner court to a complying dimension, including construction of new foundations below the annex cellar, shoring of the two existing floor beams down to the foundation, the installation of three new beams on the edge of the new opening, the installation of a new metal deck and concrete topping between the edge beam and the remaining interior floor beam, the demolition of each floor and wall for one story below, and the installation of a new light well façade; and

WHEREAS, as an alternative to the creation of a complying court, the applicant explored the feasibility of a design in which the inner court was not altered and the rooms were configured so that no room used the inner court to satisfy MDL § 30(2); and

WHEREAS, the applicant represents that both complying configurations significantly increase costs and reduce revenue; and

WHEREAS, specifically, the applicant represents that providing a complying inner court would result in a reduction in the number of hotel rooms from 287 to 263 (24 rooms) and a loss of 6,669 sq. ft. of floor area; further, the construction cost of providing a complying court would exceed the proposed design cost by approximately \$23,000 per room; and

WHEREAS, as to the design in which the inner court is

not altered and the rooms are reconfigured, the applicant represents that such a design would result in a reduction in the number of rooms from 287 to 255 (32 rooms) and construction costs in excess of the proposed design of approximately \$27,000 per room; and

WHEREAS, further, the applicant asserts that both complying designs would generate significantly less annually than the proposal; specifically, the complying inner court design would generate approximately \$2,500,000 less than the proposal and the reconfigured rooms design would generate approximately \$3,400,000 less than the proposal; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of MDL § 26(7); and

WHEREAS, the applicant states that the requested variance of MDL §26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant represents that the Building was constructed to meet the demands of a late-19th Century office and, as such, is unsuitable to satisfy the demands of a modern office, but can be altered to provide transient accommodations to business travelers and tourists in Lower Manhattan; and

WHEREAS, the applicant notes that only 11 percent of the rooms will use the existing inner court for light and ventilation and that, because the rooms will be occupied for less than 30 days, and, presumably, by visitors who will spend a significant portion of their time touring the city or conducting business outside their room, the impact of the deficient court upon the health, safety and welfare of the occupants of the hotel will be, at most, negligible; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the building, which, as noted above, was designated by LPC as an individual landmark in 1998; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC approving the proposed interior alterations, dated April 30, 2013, and a Permit for Minor Work from LPC approving the exterior alterations, dated March 27, 2013; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL § 26(7) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of MDL § 26(7) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268, is modified and that this application is granted, limited to the decision noted above, on condition that construction shall substantially conform to the

MINUTES

plans filed with the application marked, "Received June 3, 2013" - twelve (12) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, October 8, 2013.

***The resolution has been amended to the 18th WHEREAS, and 28th WHEREAS. Corrected in Bulletin Nos. 1-3, Vol. 99, dated January 23, 2014.**

BULLETIN

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New Case Filed Up to January 28, 2014

7-14-BZ

1380 Rockaway Parkway, West side of Rockaway Parkway, midblock between Farragut Road and Glenwood Road(204.85' south of Farragut Road, Block 8165, Lot(s) 48, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-36) to permit the conversion of the existing on-story, plus cellar to a physical culture establishment(Planet Fitness) in connection with an application to rezone the property from an R5D/C1-3(Z) to an R5D/C2-3(ZD). R5D/C1-3 district.

8-14-BZ

1824 East 22nd Street, West side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot(s) 41, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to request the enlargement of an existing single family residential (R3-2) zoning district. R3-2 district.

9-14-BZ

4168 Broadway, located at the southeast corner of the intersection formed by West 177th Street and Broadway, Block 2145, Lot(s) 15, Borough of **Manhattan, Community Board: 12**. Special Permit (§73-36) & (§73-52) to allow the operation of a physical culture establishment fitness center within the existing building and to permit the fitness center use to extend 25 feet into the R7-2 zoning district, contrary to §§32-10 & 22-10. C C8-3,R7-2 district.

10-14-BZ

45 Williamsburg Street West, Located on the corner of the intersection of Williamsburg St West. Wythe Avenue and Hooper Street., Block 2203, Lot(s) 20, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) seeking to enlarge the existing school contrary to use regulations, rear yard requirements and height requirements. M1-2 zoning district. M1-2 district.

11-14-A

47-04 198th Street, Located on the south side of 47th Avenue between 197th Street and 198th Street, Block 5617, Lot(s) 34, Borough of **Queens, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit#402065732-01NB to allow the continuation development of the proposed two-family residential buildings at the site. R3-2 district.

12-14-A

47-06 198th Street, Located on the south side of 47th Avenue between 197th Street and 198th Street., Block 5617, Lot(s) 35, Borough of **Queens, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit #402065723-01 R3-2 district.

13-14-A

47-08 198th Street, Located on the south side of 47th Avenue between 197th and 198th Street, Block 5617, Lot(s) 36, Borough of **Queens, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit#402065714 to allow the continuation development of the proposed two-family residential buildings at the site. R3-2 district.

14-14-A

47-10 198th Street, Located on the south side of 47th Avenue between 197 and 198th Street., Block 5617, Lot(s) 37, Borough of **Brooklyn, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit#402065705 to allow the continuation development of the proposed two-family residential buildings at the site. R3-2 district.

15-14-BZ

12-03 150th Street, Southeast corner of 150th Street and 12th Avenue, Block 4517, Lot(s) 9, Borough of **Queens, Community Board: 7**. Variance (§72-21) proposed enlargement of existing not-for-profit school building that will not comply with §24-111 community facility floor area:§24-54 sky exposure plane and §25-31 accessory parking spaces. R2 zoning district. R2 district.

16-14-BZ

1648 Madison Place, Westside of Madison Place between Avenue P and Quentin Road, Block 7701, Lot(s) 59, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) to allow the enlargement of an existing one family residence contrary to §23-141. R3-2 zoning district. R3-2 district.

DOCKETS

17-14-BZ (1/28/2014)

600 McDonald Avenue, Beginning at the SW corner of Avenue C and McDonald Avenue 655',140'W,15'N, 100'E, 586'N,4"E, 54'N,39.67'East, Block 5369, Lot(s) 6, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) proposed to add a third and forth floor to an existing school building, contrary to §24-11 floor area and lot coverage, §24-521 maximum wall height, §24-35 side yard, §24-34 requires a 10' front yard and §24-361 rear yard of the zoning reso R5 district.

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

CALENDAR

FEBRUARY 11, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 11, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

546-82-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pasquale Carpentire, owner; Ganesh Budhu, lessee.

SUBJECT – Application June 20, 2013 – Extension of Term of previously granted Variance for the continued operation of a non-conforming open public parking lot which expired on June 14, 2013. R7-A zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, bounded by 88th Avenue to its north, 150th Street to its east, 148th Street to its west, 89th Avenue to its south, Block 9693, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs, Inc., owner.

SUBJECT – Application November 7, 2013 – Extension of term of a previously granted variance (72-21) for the continued operation of a UG6 Eating and Drinking establishment (*The Townhouse*) which expired on July 9, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 9, 2003; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 234 East 58th Street, south side of East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #6M

178-99-BZ

APPLICANT – Eric Palatnik, P.C., for Saltru Associates Joint Venture, owner.

SUBJECT – Application November 30, 2012 – Amendment (§§72-01 & 72-22) of a previously approved variance which permitted an enlargement of an existing non-conforming department store (UG 10A). The amendment seeks to replace an existing 7,502 sf ft. building on the zoning lot with a new 34,626 sq. ft. building to be occupied by a department store (UG 10A) contrary to §42-12. M3-1 zoning district.

PREMISES AFFECTED – 8973/95 Bay Parkway, 1684 Shore Parkway, south side of Shore Parkway, 47/22' west of Bay Parkway, Block 6491, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #11BK

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application May 17, 2013 – Extension of Term of a previously approved Variance (§72-21) for the construction of an automotive service station (UG 16B) with accessory convenience store which expired on January 28, 2013; Waiver of the rules. C1-1/R3X (SRD) zoning district. PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta Lane, Block 7734, Lot 13 & 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDAR

80-11-A, 84-11-A & 85-11-A & 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved MDL waivers application to include new objections raised by the DOB regarding specific provisions of the MDL. R8B zoning district.

PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

ZONING CALENDAR

88-13-BZ

APPLICANT – Lawrence M. Gerson, Esq., for Allied Austin LLC, owner; American United Company, LLC, lessee.

SUBJECT – Application March 14, 2013 – Special Permit (§73-36) to allow the legalization of physical culture establishment (*Title Boxing Club*) within an existing building. C2-3/R5D zoning district.

PREMISES AFFECTED – 69-40 Austin Street, south side of Austin Street, 299' east of intersection with 69th Avenue, Block 3234, Lot 150, Borough of Queens.

COMMUNITY BOARD #6Q

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a bulk variance to allow for the residential development of the property. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #18BK

269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of the Arte Café restaurant, conforming use across, a district boundary line onto the subject premises. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

289-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new ambulatory care facility on the campus of New York Methodist Hospital. R6, C1-3/R6, & R6B, zoning district.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 28, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

119-03-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for A/R Retail LLC, owner; Equinox Columbus Centre, LLC, lessee. SUBJECT – Application October 1, 2013 – Extension of term of a special permit (§73-36) to allow the continued operation of a physical culture establishment (*Equinox*), which expired on September 16, 2013. C6-6 (MID) zoning district.

PREMISES AFFECTED – 10 Columbus Circle, aka 301 West 58th Street and 303 West 60th Street, northwest corner of West 58th Street and Columbus Circle, Block 1049, Lot 1002, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a physical culture establishment (“PCE”), which expired on September 16, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregular lot located on the west side of Columbus Circle, between West 59th Street and West 60th Street, within a C6-6 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 54-story commercial building, known as the Time Warner Center, with approximately 2,103,828 sq. ft. of floor area; and

WHEREAS, the PCE is located on a portion of the sub-cellar (40,887 sq. ft. of floor space) and first floor (720 sq. ft. of floor area) of the building, for a total PCE floor space of

41,607 sq. ft.; and

WHEREAS, the PCE is operated as Equinox; and

WHEREAS, on September 16, 2013, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C6-6 zoning district within the Special Midtown District, the operation of a PCE for a term of ten years; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 16, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on September 16, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received January 14, 2014’-(6) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on September 16, 2023;

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

THAT a certificate of occupancy will be obtained by January 28, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

209-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 150 Central Park South Incorporated, owner; Exhale Enterprises, Inc., lessee.

SUBJECT – Application September 23, 2013 – Extension of term of a variance (§72-21) for the continued operation of physical culture establishment (*Exhale Spa*) located in a portion of a 37-story residential building which expired on October 21, 2013. R10-H zoning district.

PREMISES AFFECTED – 150 Central Park South, south side of Central Park South between Avenue of the Americas and Seventh Avenue, Block 1011, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #5M

MINUTES

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a variance authorizing a physical culture establishment (“PCE”) in an R10H (C5-1) zoning district, which expired on October 21, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

WHEREAS, Community Board 5, Manhattan, declines to issue a recommendation regarding this application; and

WHEREAS, the subject site is an interior lot located on the south side of Central Park South, between Seventh Avenue and Avenue of the Americas, within an R10H (C5-1) zoning district; and

WHEREAS, the site is occupied by a 37-story mixed residential and commercial building with approximately 307,549 sq. ft. of floor area; and

WHEREAS, the PCE is located on portions of the cellar, first and second floors, for a total PCE floor space of 10,500 sq. ft.; and

WHEREAS, the PCE is operated as Equinox; and

WHEREAS, on October 21, 2003, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit, in an R10H district, the operation of a PCE for a term of ten years contrary to ZR § 22-00; and

WHEREAS, the applicant now seeks to extend the term of the variance authorizing the PCE for ten years; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 21, 2003, so that as amended the resolution reads: “to grant an extension of the variance for a term of ten years, to expire on October 21, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received December 11, 2013’- (4) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on October 21, 2023;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT there will be no change in ownership or

operating control of the PCE without prior approval from the Board;

THAT the hours of operation of the PCE will be limited to Monday through Friday, from 6:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.;

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

THAT a certificate of occupancy will be obtained by January 28, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

176-09-BZ

APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NYC Fashion Institute of Technology, owner.

SUBJECT – Application October 4, 2013 – Extension of time to complete construction of a Special Permit (§73-64) to waive height and setback regulations (§33-432) for a community use facility (*Fashion Institute of Technology*) which expired on October 6, 2013. C6-2 zoning district.

PREMISES AFFECTED – 220-236 West 28th Street, south side of West 28th Street between Seventh Avenue and Eighth Avenue, Block 777, Lot 1, 18, 37, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction under a previously-granted special permit, which authorized, within a C6-2 zoning district, the construction of a ten-story addition to an existing community facility building (Use Group 3); the time to complete construction expired on October 6, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

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WHEREAS, this application is brought on behalf of the Fashion Institute of Technology (“FIT”), a college of the State University of New York, a non-profit entity; and

WHEREAS, the subject site is located on the south side of West 28th Street, between Seventh Avenue and Eighth Avenue, within a C6-2 zoning district; and

WHEREAS, the site is currently occupied by four FIT buildings located on Lots 1, 18 and 37, with a total floor area of 746,889 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 6, 2009, when, under the subject calendar number, the Board granted a special permit pursuant to ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the construction of a ten-story addition to an existing community facility building (Use Group 3), which does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432; and

WHEREAS, substantial construction was to be completed by October 6, 2013, in accordance with ZR § 73-70; however, as of that date, substantial construction was not complete; and

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

WHEREAS, the applicant notes that work has not commenced at the site due to insufficient funding; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 6, 2009, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years, to expire on October 6, 2017; *on condition*:

THAT substantial construction will be completed by October 6, 2017;

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

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

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

(DOB Application No. 120029940)

Adopted by the Board of Standards and Appeals, January 28, 2014.

427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

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

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application August 13, 2013 – Extension of term of a special permit (§73-243) allowing an eating and drinking establishment (*McDonald's*) with accessory drive-thru which expired on January 18, 2013; Extension of time to obtain a Certificate of Occupancy which expired on September 11, 2013; Waiver of the Rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

799-89-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1470 Bruckner Boulevard Corp., owner.

SUBJECT – Application September 24, 2013 – Extension of Term of a previously approved Variance (ZR 72-21) for the continued operation of a UG 17 Contractor's Establishment (*Colgate Scaffolding*) which expired on December 23, 2013. C8-1/R6 zoning district.

PREMISES AFFECTED – 1460-1470 Bruckner Boulevard, On the South side of Bruckner Blvd between Colgate Avenue and Evergreen Avenue. Block 3649, Lot 27 & 30. Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

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20-02-BZ

APPLICANT – Law office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co. LLC, owner; TSI East 23, LLC dba New York Sports Club, lessee.

SUBJECT – Application September 20, 2013 – Extension of term of a special permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) in a five story mixed use loft building, which expired on August 21, 2013. C6-4 zoning district.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue south and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

331-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (*Century 21*). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum permitted floor area. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway. Block 6911, Lot 6 & 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III, owners.

SUBJECT – Application October 28, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a 12-story mixed-use building and a 6-story community facility dormitory and faculty housing building (*CUNY Graduate Center*), contrary to use and bulk regulations. The amendment seeks the elimination of the cellar and other design changes to the Dormitory Building. M1-4/R6A (LIC) zoning district.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east, Block 28, Lot 12, 15, 17, 18, 21, 121, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

68-13-A

APPLICANT – Bryan Cave LLP, for ESS PRISA LLC, owner; OTR 330 Bruckner LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings’ determination that the existing sign is not entitled to non-conforming use status. M3-1 zoning district.

PREMISES AFFECTED – 330 Bruckner Boulevard, Bruckner Boulevard between E. 141 and E. 149 Streets, Block 2599, Lot 165, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated January 14, 2013, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. [S]uch documentation does not support the establishment of the existing sign prior to the relevant non-conforming use date. As such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 24, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, the subject premises (“the Premises”) is located on the east side of Bruckner Boulevard between East

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141st Street and East 149th Street, within an M3-1 zoning district; and

WHEREAS, the Premises is occupied by an eight-story warehouse; on the northeast wall of the building is an advertising sign measuring 79 feet by 143 feet (11,297 sq. ft.) (the “Sign”); and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign structure, OTR Media Group, Inc. (the “Appellant” or “OTR”); and

WHEREAS, the Appellant states that the Sign is located 35 linear feet from and within view of the Bruckner Expressway, which is an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant states that the Premises has been located within an M3-1 zoning district since the adoption of the Zoning Resolution on December 15, 1961; and

WHEREAS, the Appellant states that DOB has issued permits for the Sign in connection with the following application numbers: (1) 201143217 in 2008 (the “2008 Permit”); (2) 200080170 in 1990 (the “1990 Permit”); and (3) BN 27/81 in 1981 (the “1981 Permit”); in addition, in 2012, the Appellant applied for and was denied a permit for the sign under Application No. 220233110 (“the 2012 Permit”); and

WHEREAS, the 1981 Permit application was filed on January 21, 1981 to legalize an existing business sign; the application includes an amendment (the “Amendment”), dated March 18, 1981, which states

Request reconsideration to the objection of 3/4/81 on grounds that the sign under construction is a business sign. Since a storage and office facility is maintained in this building by the company whose sign is located on the easterly wall of said building, said sign complies with section 42-51 of the Zoning Resolution for a business sign; and

WHEREAS, below the reconsideration request is a handwritten note, which states that “Request denied as per report herewith attached” and is signed by the Bronx Borough Commissioner and dated March 18, 1981; and

WHEREAS, the 1981 Permit application also includes: (1) an April 14, 1981 letter from the Chairman of Community Board 1 to New York Bus Service (“Community Board letter”), in which the Chairman states that he knows of “no objection to the sign as a business sign”; and (2) an April 15, 1981 declaration (the “Declaration”) executed by the owner of the Premises at the time, Peter’s Bag Corp., which states that “when New York Bus Service ceases to use a portion of [the Premises] to conduct their business, the sign indicating their business will be removed from the face of [the Premises]”; and

WHEREAS, finally, the 1981 Permit application includes a Departmental Memorandum, dated May 7, 1981, from the DOB Commissioner to the Bronx Borough Commissioner regarding the Premises (the “Reconsideration”); the Reconsideration makes reference to the Zoning Resolution definition of “business sign,” the

Chairman’s letter, and the Declaration, and provides, in pertinent part, that “[i]n view of the above . . . reconsideration is given in this matter provided that the Declaration is acceptable to the Department Counsel, reference is made on Building Notice Application and the Declaration is filed with the City Register prior to issuance of the permit”; and

WHEREAS, the 1990 Permit was revoked on March 15, 2013, the 2008 Permit was revoked on April 23, 2013, and the 2012 Permit application was disapproved on July 15, 2013; the permit revocations and denial, and DOB’s January 14, 2013 Final Determination denying registration of the Sign reflect the DOB’s interpretation that the Sign is not a lawful, non-conforming advertising sign because it was changed under the 1981 Permit to an accessory business sign, which discontinued the advertising sign use; and

WHEREAS, the Appellant now seeks a reversal of DOB’s rejection of the registration of the Sign1; and

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

REGISTRATION REQUIREMENT

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

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or

1 DOB’s basis for denying the 2012 Permit application on July 15, 2013 and denying the request to register the Sign on January 14, 2013 are identical. As such, this appeal challenges both DOB actions.

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“non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and states that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

REGISTRATION PROCESS

WHEREAS, on September 5, 2012, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching copies of the following in support of the establishment of the Sign: the 1981 Permit; the 1990 Permit; the 2008 Permit; a 1958 photo; a 1959 and 1980 Bronx Yellow Pages excerpt; a 1967 photo; a 1978 mortgage; a 1980 photo; a 1980 letter from the president of the New York Bus Service; Bronx address book excerpts from 1956, 1959, 1967, and 1980; a 1973 New York Bus Service Bus Schedule; photos from 1988, 1993, 1994, 1998, 2001, 2005, 2008, 2009, 2010, 2011, and 2012; and two affidavits from sign painters; and

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

WHEREAS, the Appellant states that, believing its evidence to be sufficient, it did not submit further evidence in response to the October 3, 2012 notice; and

WHEREAS, accordingly, on January 14, 2013, DOB issued the Final Determination denying registration; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 Definitions

Accessory use, or accessory

An "accessory use":

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

* * *

Sign, advertising

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

* * *

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto; and

* * *

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and

Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a),(b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

- (a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:
 - (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
 - (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be

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structurally altered, relocated or reconstructed.

(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

(c) The more restrictive of the following shall apply:

(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or

(2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

* * *

ZR § 52-11 *Continuation of Non-Conforming Uses*

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

* * *

ZR § 52-61 *Discontinuance*

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

Administrative Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs,

sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

(1)The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

* * *

1 RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

* * *

1 RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming; and

* * *

1 RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for purposes of compliance with the Zoning Resolution:

(a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or

(b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot.

* * *

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RELEVANT DOB POLICY AND PROCEDURE NOTICES

Technical Policy and Procedure Notice No. 14/1988

Documentation in Support of Existing Use

[T]he following shall be a guideline, in order of preference, for the acceptable documentation in support of [an] existing use for legalization or proof of continual non-conforming use:

- a) Records of documentation from any City Agency. Such records may include, but not be limited to, tax records, multiple dwelling registration cards, I cards from HPD and cabaret licenses.
- b) Records, bills, documentation from public utilities indicating name and address of business and time period bills cover.
- c) Any other documentation or bills indicating the use of the building, such as telephone ads, commercial trash hauler invoices, liquor licenses, etc.
- d) Only after satisfactory explanation or proof that the documentation pursuant to (a), (b) or (c) does not exist, affidavits regarding the use of a building will be accepted to support either an application for legalization or as proof concerning whether or not a prior non-conforming use was continual per ZR 52-61. However, where such affidavits are submitted, they may be accepted only after the Borough Superintendent has reviewed them with close scrutiny; and

* * *

Operations Policy and Procedure Notice No. 10/1999

Signs Presumed to be Not Accessory / Advertising

In the following instances, there will be a rebuttable presumption that the proposed sign is not accessory, i.e., there will be a rebuttable presumption that the sign is an advertising sign.

- a. A sign proposed in connection with a principal use whose activity on the zoning lot consists primarily of storage or a warehouse for its business activities conducted off the zoning lot and where the principal use occupies less than the full building on the zoning lot.

ISSUE ON APPEAL

WHEREAS, the Board notes that the Appellant and DOB agree that advertising sign use was established at the Premises as of May 31, 1968; and

WHEREAS, in addition, the Board notes that the Appellant and DOB agree that messages for New York Bus

Service were displayed on the side of the building at the Premises from 1981 to 1988; and

WHEREAS, accordingly, at issue is whether the display of such messages constituted a discontinuance of the advertising sign use, per ZR § 52-61; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because the Sign has been used for advertising since before May 31, 1968 until the present, without any two-year period of discontinuance, making it a protected non-conforming advertising sign pursuant to ZR §§ 42-55(c)(2) and 52-11; and

WHEREAS, the Appellant concedes that the 1981 Permit was for an accessory business sign, but asserts that the Sign never actually displayed messages regarding the principal use of the Premises; and

WHEREAS, specifically, the Appellant states that although from 1981 to 1988, the Sign hosted messages relating to New York Bus Service in ostensible accordance with the 1981 Permit, during that time period the Sign continued to satisfy the definition of "advertising sign" because New York Bus Service did not conduct any operations at the Premises; and

WHEREAS, in support of this assertion, the Appellant submitted several affidavits from individuals claiming personal knowledge of the use of the Premises during the time period in question; the affiants include: (1) the vice president of the corporate entity ("Peter's Bag Corp.") that owned the Premises from 1965 through 1987; (2) the chief financial officer of Peter's Bag Corp. from 1987 through 1989; (3) a purchasing and inventory manager for New York Bus Service from 1980 through 1996; (4) a sign painter who worked at the Premises and painted the Sign from 1977 until 1994; and (5) the principal of OTR; each of the affiants assert that New York Bus Service did not occupy the Premises; and

WHEREAS, the Appellant asserts that, taken together, the sworn statements demonstrate that New York Bus Service had no presence at the Premises other than the Sign; and

WHEREAS, the Appellant also attacks the validity of the 1981 Permit, arguing that it does not contain a sufficient basis for the conclusion that New York Bus Service was the principal use of the Premises such that a New York Bus Service sign could be permitted as a business sign; and

WHEREAS, the Appellant asserts that the 1981 Permit does not include any direct evidence of New York Bus Service's use of the building located at the Premises as a warehouse; as such, the Appellant asserts that the 1981 Permit was issued based on a clear misstatement of fact; and

WHEREAS, the Appellant states that the Community Board Chairman's letter does not attest to New York Bus Service's actual presence at the Premises and that the Declaration merely implies but does not state that New York Bus Service conducts business at the Premises; and

WHEREAS, the Appellant also submitted the following evidence, which it contends contradicts the notion

2 The parties disagree over the number of signs and the calculation of the total surface area occupied by the advertising sign use; however, the Board declines to take a position on this issue for reasons set forth below.

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that New York Bus Service had business operations at the Premises when the 1981 Permit was issued: (1) New York Bus Service letterhead from the 1980s, showing its address off the New England Thruway at Exit 13; (2) the 1980 Bronx Yellow Pages listing New York Bus Service at Hutchinson Avenue; and (3) the 1980 Bronx Address Book listing only Peter's Bag Corp. at the Premises; and

WHEREAS, as to the Reconsideration in the 1981 Permit application, the Appellant states that it lacked factual support, and, as such, was clearly granted in error and must be disregarded by DOB and by the Board, citing BSA Cal. No. 251-12-A (330 East 59th Street, Manhattan), in which the Board upheld a DOB determination that a reconsideration was issued in error and could not be relied upon because the Board agreed with DOB that the reviewing official at DOB failed to consider the relevant dates under the Zoning Resolution and BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan), in which the Board reversed a DOB determination that a reconsideration was issued in error, finding insufficient evidence that DOB clearly issued the reconsideration in error; and

WHEREAS, the Appellant contends that the 1981 Permit was merely a sham and that it should be disregarded from the Board's analysis of whether advertising sign use was continuous at the Premises; and

WHEREAS, the Appellant asserts that DOB's recognition of the sham accessory permit is embodied in Operations Policy and Procedure Notice No. 10/1999 ("OPPN 10/99"), which was issued to govern DOB's handling of permit applications for signs in proximity to arterial highways, and in 1 RCNY 49-43(a), which deems certain signs on zoning lots with warehouses advertising signs; and

WHEREAS, the Appellant notes that in BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan), the Board sustained DOB's application of Rule 49-43(a) and the OPPN 10/99 to reject registration of two signs as accessory where accessory sign permits had been obtained and the principal use of the zoning lot was purported to be a warehouse, but the evidence of the *bona fides* of the warehouse operation was found by DOB to be insufficient; and

WHEREAS, the Appellant asserts that the facts and circumstances of BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan) and those surrounding the Sign are similar; however, in that case, DOB repudiated the permits based on the OPPN 10/99 and Rule 49-43(a), but in this case, DOB ignores evidence suggesting that the 1981 Permit was a sham and asserts that it was properly issued; and

WHEREAS, the Appellant states that, accordingly, even if the Board agrees with DOB that the 1981 Permit was properly issued, the Board should find that the arrangement constituted a sham and that the Sign was always used for advertising; and

WHEREAS, in conclusion, the Appellant asserts that the record contains an overwhelming factual basis for the

Board to conclude that the Sign has been used continuously for advertising since before May 31, 1968, and, that, absent the erroneous issuance of the 1981 Permit by DOB, there would be no question as to the Sign's continuity and right to protection under ZR §§ 42-55 and 52-11; and

WHEREAS, as such, the Appellant asserts that the Final Determination should be reversed, the Sign registration application accepted, and the 2012 Permit application approved; and

DOB'S POSITION

WHEREAS, DOB asserts that to the extent that an advertising sign use was established as non-conforming at the Premises, such use cannot be recognized as non-conforming today because the New York Bus Company sign displayed in 1981 was legalized pursuant to a permit for an as-of-right accessory sign; as such, per ZR § 52-61, the Sign lost its non-conforming status; and

WHEREAS, DOB states that in 1981, ZR § 42-52 generally allowed accessory business signs with no restriction on size, illumination or proximity to an arterial highway or park; in contrast, ZR § 42-53 prohibited advertising signs within 200 feet and within view of an arterial highway (which continued the prohibition on arterial advertising signs that has existed since June 28, 1940); and

WHEREAS, DOB asserts that in 1981, where a sign was in proximity to an arterial highway and purported to be accessory to a warehouse, the sign was presumed to be an advertising sign (DOB notes that this presumption was later formalized as OPPN 10/99 and Rule 49-43(a)); and

WHEREAS, accordingly, DOB states that when it initially reviewed the 1981 Permit application, it determined that the application lacked sufficient evidence to overcome the presumption that the New York Bus Service sign was an advertising sign; and

WHEREAS, however, DOB states that it ultimately determined that the applicant had provided sufficient documentation to overcome the presumption of advertising; and

WHEREAS, in particular, DOB asserts that it relied on multiple representations in the 1981 Permit application documents that the sign was an accessory use to an on-site business, including: (1) the application job description, which was certified by a registered architect and states that the application is "filed for business sign painted on easterly wall of building in accordance with plans filed herewith"; (2) the Amendment, which was also certified by a registered architect and states that "a storage and office facility is maintained in this building by the company whose sign is located on the easterly wall of said building"; and (3) the Declaration, made by the vice president of Peter's Bag Corp., which implies that New York Bus Service conducts business on the Premises when it declares that the Sign will be removed when it ceases to conduct business; and

WHEREAS, further, DOB notes that the 1981 Permit application includes the Community Board letter, which implies but does not directly state that the proposed sign is a business sign rather than an advertising sign; and

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WHEREAS, therefore, DOB states that, in 1981, it had a sufficient basis to issue the 1981 Permit legalizing the accessory sign; and

WHEREAS, likewise, DOB asserts that the Appellant has not in the course of this proceeding advanced a sufficient reason to question the validity of or repudiate the issuance of 1981 Permit; and

WHEREAS, to support this assertion, DOB cites to the Board's decision in BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan); in that case, DOB states that the Board found that where the record reflects DOB's prior acknowledgement that a sign use was legally established and there is no sufficient evidence to invalidate that determination, it should not be disturbed or disregarded; and

WHEREAS, DOB states that the evidence provided by the Appellant allegedly demonstrating that the 1981 Permit was a sham is unpersuasive; and

WHEREAS, specifically, DOB states that the Appellant erroneously relies on four affidavits—two from former officers of Peter's Bag Corp., and one each from a former manager of New York Bus Service, a sign painter, and the president of OTR Media Group, Inc.—to support its sham argument; and

WHEREAS, DOB contends that these affidavits are not sufficient to demonstrate that the accessory sign permit was issued in error and do not undermine the position that an accessory sign was displayed from 1981 through 1988 in accordance with the 1981 Permit; and

WHEREAS, DOB notes that under Technical Policy and Procedure Notice No. 14/1988 ("TPPN 14/88"), affidavits cannot be the sole basis for demonstrating a use; and

WHEREAS, DOB asserts that the affidavit of the vice president of Peter's Bag Corp. is particularly questionable since the 1981 Permit application appears to bear his signature; of the two contradictory statements from this affiant, the statement made contemporaneously with the filing of the permit application stating that the sign was accessory to the New York Bus Service's use of the premises to conduct its business is more credible than a conflicting statement made 32 years later as to the actual use of the sign; and

WHEREAS, DOB also states that the sign painter's statement that he did not see any offices or storage for New York Bus Service inside the building in 1977 does not prove exclusive use of the building located at the Premises by other tenants; and

WHEREAS, in addition, DOB states that the Appellant's evidence that Peter's Bag Corp. occupied the Premises in 1980 and that New York Bus Service had facilities at locations during the 1980s other than at the Premises does not prove that New York Bus Service did not also operate a storage facility at the Premises when the 1981 Permit was issued; nor does the Appellant's evidence of New York Bus Service facilities in other locations prove that the statements made in connection with the 1981 Permit

application were untrue and made with the intent to circumvent the law; and

WHEREAS, DOB also observes that evidence of a contemporaneous use provided on behalf of the current occupant of the building, such as that reviewed by DOB in 1981, is likely to be more credible than evidence of a historical use; and

WHEREAS, finally, DOB observes that whereas BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan) involved a determination that a sign was entitled to non-conforming use status, here, DOB determined in 1981 that the Sign was *conforming*; in such a case, DOB asserts that there is even less cause to overturn a DOB determination since non-conforming uses are disfavored under the Zoning Resolution; and

WHEREAS, accordingly, DOB states that it properly issued the Final Determination denying registration of the Sign as a non-conforming advertising sign; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the Sign registration because the use of the Sign for advertising was discontinued for a period of more than two years; and

WHEREAS, in particular, the Board finds that, based on the record, the Sign was used to display messages that were accessory to the principal use of the warehouse at the Premises for more than two years, beginning in 1981, when the 1981 Permit was obtained to legalize an existing business sign for New York Bus Service, until 19883; and

WHEREAS, the Board agrees with DOB that the Appellant has not submitted sufficient evidence to demonstrate that DOB clearly erred in issuing the 1981 Permit; and

WHEREAS, the Board also agrees with DOB that the Reconsideration issued in connection with the 1981 Permit was properly issued and supported by substantial evidence, including numerous contemporaneous assertions by different people—an officer of the corporate entity that owned the Premises at the time, the job applicant, and the Chairman of the Community Board—each with an obligation under the Administrative Code not to provide false or misleading statements to DOB; as noted above, the officer of the corporate entity that owned the Premises stated that "when New York Bus Service ceases to use a portion of [the Premises] to conduct their business, the sign indicating their business will be removed from the face of [the Premises]," the job applicant stated that "[the Sign] complies with section 42-51 of the Zoning Resolution for a business sign," and the Chairman of the Community Board stated that he had "no objection to the sign as a business sign"; and

WHEREAS, the Board notes that the job applicant, as a registered architect, also had an ethical obligation not to provide false statements or misleading statements in a permit

3 Based on the record, the parties agree that messages for the New York Bus Service were displayed on the Sign from 1981 until 1988.

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application; and

WHEREAS, the Board disagrees with the Appellant that a parsing of the 1981 Permit application documents indicates that no one actually stated that New York Bus Service occupied the Premises; rather, the Board finds that the clear intent of the documents and the statements made therein was to convince DOB that New York Bus Service occupied the Premises so that DOB would grant a permit legalizing the New York Bus Service sign, which, as noted above, measured 11,297 sq. ft. in surface area and was located 35 feet from the Bruckner Expressway and was permitted as an accessory business sign but prohibited as an advertising sign; and

WHEREAS, as to the Appellant's affidavits asserting that New York Bus Service did not use the Premises while the New York Bus Service sign was displayed, the Board agrees with DOB that they are not a sufficient basis to conclude that the 1981 Permit was issued in error; and

WHEREAS, the Board observes that although the Appellant's affidavits suggest the existence of a sham accessory permit, affidavits are the least valuable form of evidence of a use according to TPPN 14/88, and, as such, they must be scrutinized closely and are insufficient to establish a fact, absent supporting documentation; and

WHEREAS, under close scrutiny, the Board finds the affidavits unpersuasive, as follows: (1) the affidavit of the vice president of Peter's Bag Corp. is directly contradicted by statements made by the vice president himself in connection with the 1981 Permit application; (2) the affidavit from chief financial officer of Peter's Bag Corp. could only be based on personal knowledge acquired during 1987 or 1988, because the CFO states that he was employed by Peter's Bag Corp. from 1987 through 1989; (3) the affidavit of the purchasing and inventory manager for New York Bus Service from 1980 through 1996 is vague and contradicted by evidence in the record; (4) the affidavit of the sign painter who worked at the Premises is insufficient to prove the actual use of the building since it is unclear when and how often he visited the building and how much of the building he actually observed; and (5) the affidavit of the principal of OTR is not based on personal knowledge and may be tainted by OTR's interest in the outcome of the appeal; and

WHEREAS, the Board also noted, importantly, that none of the affiants claims to have occupied the building during the time period in question; as such, the affidavits are of limited value when weighed against contemporaneous statements to the contrary that were made proactively in support of a permit application; and

WHEREAS, as for the non-affidavit evidence submitted by the Appellant, the Board agrees with DOB that it is of limited evidentiary value; and

WHEREAS, specifically, the Board agrees with DOB that documentary evidence that Peter's Bag Corp. occupied the Premises in 1980 and that New York Bus Service had facilities at locations during the 1980s other than at the Premises does not prove that New York Bus Service did not also operate a storage facility at the Premises when the 1981 Permit was issued; similarly, the Appellant's evidence of

New York Bus Service facilities in other locations do not prove that it did not also maintain a storage facility at the Premises; and

WHEREAS, accordingly, the Board agrees with DOB that neither the Reconsideration nor the 1981 Permit was issued in error; as such, and consistent with the Board's rationale in BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan), the Board declines to overrule DOB's 1981 determination; and

WHEREAS, the Board also rejects the Appellant's assertion that the facts in the instant matter are similar to those in BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan); and

WHEREAS, the Board notes that the 1981 Permit was subjected to a full plan examination, including a rigorous fact-finding inquiry on the issue of the principal use of the Premises, and supported by a Commissioner-level reconsideration and a restrictive declaration by the owner of the Premises; in contrast, the accessory permits obtained in BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan) were filed under professional certification and signed off nearly four years after the adoption of OPPN 10/99; and

WHEREAS, additionally, the Board notes that when the 1981 Permit was obtained, the Sign was subject to ZR § 42-53 (the pre-cursor to ZR § 42-55), which was amended on February 21, 1980 to, among other things, confer non-conforming use status upon advertising signs subject to the arterial highway restrictions to the extent of their size as of May 1, 1968; and

WHEREAS, accordingly, at hearing, the Board questioned why there was no attempt in 1981 to legalize the Sign as an advertising sign under ZR § 42-53; in response, the Appellant speculated that the evidence of the Sign's establishment and/or continuous use (under ZR § 52-61), was unavailable at the time; and

WHEREAS, thus, the Board observes that it is reasonable to conclude that the 1981 Permit was obtained for an accessory sign because there was insufficient evidence to support a permit application to "grandfather" an advertising sign pursuant to the 1980 amendment to ZR § 42-53 and ZR § 52-61; and

WHEREAS, as to the Appellant's assertion that even if the 1981 Permit was not issued in error, the Board should find that, based on the record, the New York Bus Service sign was, by definition, an advertising sign because the message displayed was related to a business operated off the zoning lot, the Board disagrees; and

WHEREAS, the Board observes that, according to TPPN 14/88, the highest value documentation for demonstrating a use is a record from a city agency; the 1981 Permit is a record from a city agency, namely, DOB, the agency responsible for regulating the use and occupancy of buildings; by issuing the 1981 Permit, DOB made an official statement about not only the accessory use authorized by the permit (the New York Bus Service sign), but also the principal use of the Premises (a storage facility for New

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York Bus Service); the Appellant’s evidence to the contrary consists of affidavits, which are the lowest value evidence under TPPN 14/88; further, as noted above, the affidavits contain statements that are vague, virtually unsupported, contradictory, and/or self-serving; and

WHEREAS, therefore, the Board finds that DOB properly determined that to the extent that a non-conforming advertising sign use was established at the Premises, such use was discontinued, per ZR § 52-61, from 1981 until 1988 when an accessory sign was maintained; as such, DOB properly rejected the Appellant’s registration of the Sign as a non-conforming advertising sign and properly denied the 2012 Permit application; and

WHEREAS, the Board notes that a secondary issue arose in the context of the appeal regarding the number of signs and total surface area of advertising sign use displayed as of May 31, 1968; the Appellant contends that, based on a 1967 photo, an 11,297 sq.-ft. sign existed at the Premises as of May 31, 1968; DOB contends that the 1967 photo shows that six separate signs existed with less than 11,297 sq. ft. of surface area; in essence, the parties disagree over how the surface area of a sign is measured under the applicable provisions of the Zoning Resolution; however, the Board finds that the precise size of the Sign (or signs) as of May 31, 1968 is inconsequential, since, for the reasons set forth above, the Board finds that no advertising sign is permitted at the Premises, per ZR §§ 42-55 and 52-61; therefore, the Board does not take a position on this issue; and

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

131-13-A & 132-13-A

APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.
SUBJECT – Application May 10, 2013 – Proposed construction of a residence not fronting on a legally mapped street, contrary to General City Law Section 36. R2 & R1 (SHPD) zoning districts.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated April 24, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 read, in pertinent part:

The street giving access to proposed building is not duly placed on the official map of the City of New

York therefore:

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law

B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 22, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, City Councilmember Debbie Rose submitted testimony in opposition to the application, citing fire safety concerns; and

WHEREAS, certain members of the surrounding community, including a community group known as the Serpentine Art & Nature Commons, Inc. (the “Opposition”), provided written and oral testimony in opposition to the application citing the following concerns: (1) the slope of the roadway and its distance will interfere with firefighting operations; (2) the proposal is contrary to a private agreement (a November 1950 restrictive covenant) concerning the site and other nearby parcels; and (3) the Board previously denied a GCL § 36 waiver application concerning the site in part because the Fire Department disapproved the application; and

WHEREAS, the subject site is located on Cecilia Court off of Howard Lane, partially within an R1-1 zoning district and partially within an R2 zoning district, within the Special Hillside Preservation District; and

WHEREAS, the applicant states that the site does not front a mapped street, but has access to Howard Avenue, a mapped street, via a private utility and access easement known as Howard Lane, which was recorded on December 12, 1950 but does not appear on the City Map; the applicant notes that Howard Lane has a width of 16 feet, a slope of approximately 12.2 percent and that the distance between the proposed building and Howard Avenue along Howard Lane is 550 feet; and

WHEREAS, the applicant states that the site is vacant; however, it has been the subject of a series of Board and City Planning actions over the years; specifically, on February 28, 1989, under BSA Cal Nos. 26-86-A, 27-86-A and 28-86-A, the Board denied applications filed pursuant to GCL § 36 to permit construction of three single-family residences not fronting on a mapped street; on January 6, 1998, under BSA Cal. No. 209-07-A, the Board granted an application filed pursuant to GCL § 36 to permit the construction of one single-family residence not fronting on a mapped street; in 2001, the Department of City Planning approved an authorization application filed under ULURP No. N000523 ZAR to allow the construction of a single-family residence on former Lot

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WHEREAS, the applicant now seeks to construct two, three-story, single-family residences contrary to GCL § 36 and to change the slope of Howard Lane to 7.3 percent; and

WHEREAS, by letter dated August 26, 2013, the Fire Department stated that the residences are proposed on a private roadway having a substandard width, contrary to the Fire Code, but that it would not object to their construction provided that the residences are fully-sprinklered in accordance with New York City Building Code § 903 and the Fire Interim guidelines, which state that the Fire Department will grant a modification for construction of new occupancy group R-3 (one-family and two-family) dwellings with modified fire apparatus access if the building is designed, constructed, and maintained in accordance with New York City Building Code § 903; and

WHEREAS, on September 3, 2013, the applicant submitted a revised site plan to address the request of the Fire Department; and

WHEREAS, at hearing, the Board raised concerns regarding the slope of the roadway and the firefighting apparatus access; and

WHEREAS, in response, the applicant submitted a letter, a survey, and a site plan, which contends that: (1) the existing roadway was constructed prior to the current Fire Code requirements and Special Hillside Preservation District regulations and has served as access for emergency services to the existing homes fronting the roadway for many years; and (2) the Fire Department firefighting manual indicates that the maximum roadway slope for a tower ladder is 15 percent, which is more than the existing mean slope of 12.2 percent and significantly more than the proposed mean slope of 7.3 percent; therefore, the applicant asserts that either slope is within the acceptable slope for firefighting purposes; and

WHEREAS, by letter dated October 22, 2013, the Opposition raises concerns regarding the information provided by the applicant as to the length and slope of the grade; and

WHEREAS, by letter dated October 28, 2013, the Fire Department informed the Board that, based on additional information regarding the site, it now objected to the proposed roadway because it included grades substantially in excess of ten percent, contrary to Fire Code § 503.2.7; and

WHEREAS, following a series of discussions and letters among the parties, the Fire Department approved the revised proposal, subject to the following conditions: (1) the residences will be fully-sprinklered; (2) a Fire Code-compliant apparatus turnaround will be installed; (3) two new fire hydrants will be installed; (4) a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed; and (5) the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line; and

WHEREAS, in response to the issues identified by the Opposition regarding Howard Lane, which is a private easement, the applicant acknowledged that it would be required to seek authorization from the other parties to the

1950 restrictive covenant in order to implement certain Fire Department conditions; and

WHEREAS, on January 15, 2014, the applicant submitted a revised site plan that was reviewed and approved by the Fire Department; and

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

Therefore it is Resolved, that the decisions of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawings filed with the application marked "Received January 15, 2014" (2) sheets; and *on further condition*

THAT the proposal will comply with all applicable zoning district requirements and all other applicable laws, rules, and regulations;

THAT all required approvals from the Department of City Planning will be obtained prior to the issuance of building permits;

THAT the building will be fully sprinklered in accordance with BSA-approved plans;

THAT a Fire Code-compliant apparatus turnaround will be installed;

THAT two new fire hydrants will be installed;

THAT a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed;

THAT the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line;

THAT there will be "No Parking" along the entire length of the easement;

THAT the conditions requested by the Fire Department be implemented before the Temporary Certificate of Occupancy and Certificate of Occupancy are issued;

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

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

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

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

Adopted by the Board of Standards and Appeals on January 28, 2014.

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230-13-A

APPLICANT – Nikolaos Sellas, for L & A Group Holdings LLC, owners.

SUBJECT – Application August 8, 2013 – Proposed construction of a four-story residential building located within the bed of a mapped street (29th Street), contrary to General City Law Section 35. R6A/R6B zoning district.

PREMISES AFFECTED – 29-19 Newtown Avenue, northeasterly side of Newtown Avenue 151.18' northwesterly from the corner formed by the intersection Newtown Avenue and 30th Street, Block 597, Lot 7, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839150, reads in pertinent part:

Proposed construction partially located in bed of mapped street as per GCL 35; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

WHEREAS, an application for the adjacent site, Lot 9, was decided on the same date, pursuant to BSA Cal. No. 231-13-A (29-15 Newtown Avenue, Queens); and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, this is an application to allow the construction of a four-story multiple dwelling partially within the bed of 29th Street, a mapped but unbuilt street; and

WHEREAS, the subject site is located on the east side of Newton Avenue between 28th Street and 30th Street, partially within an R6A zoning district and partially within an R6B zoning district; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, by letter dated September 3, 2013, the Fire Department states that it has reviewed the proposal and has no objection to its approval; and

WHEREAS, by letter dated September 11, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there is a 12-inch diameter private combined sewer and an eight-inch diameter city water main in 29th Street between Newton Avenue and Astoria Boulevard; and (2) Amended Drainage Plan, dated February 15, 1935, sheet 1 of 3, for the above referenced location, calls for a future 12-inch diameter combined sewer in the bed of 29th Street between Newton

Avenue and Astoria Boulevard; and

WHEREAS, DEP’s letter further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped 29th Street and the width of the widening portion of the street at the above referenced location; and (2) the distance from the lot line of Lot 7 to the terminal manhole of the 12-inch diameter private combined sewer, the end cap of the eight-inch diameter city water main, and the hydrant in the bed of 29th Street, between Newton Avenue and Astoria Boulevard; and

WHEREAS, in response to DEP’s request, the applicant submitted an updated survey; and

WHEREAS, by letter dated November 25, 2013, DEP states that, based on the survey submitted by the applicant, the future 12-inch diameter combined sewer crossing Lot 7 and Lot 9 will not be required, and, therefore, DEP has no objection to the proposed applications; and

WHEREAS, by correspondence dated January 17, 2014 the Department of Transportation (“DOT”) states that it has reviewed the proposal and has no objections; and

WHEREAS, the DOT notes that according to the Queens Borough President’s Topographical Bureau: (1) Newton Avenue from 28th Street to 30th Street is a mapped street with width of 70 feet on the City Map and was acquired to full width on July 11, 1914; (2) 29th Street between Astoria Avenue and Newton Avenue has a Corporation Counsel Opinion of dedication for 37 feet, as in use on May 2, 1922; and (3) the portion of 29th Street within the proposed development site is mapped at a width of 45 feet width on the City Map and the City does not have title; and

WHEREAS, DOT also notes that the improvement of 29th Street at this location (Block 597, Lot 7) is not presently included in DOT’s Capital Improvement Program; and

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

Therefore it is Resolved, that the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839150, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked “Received January 22, 2014” one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations will be complied with; and *on further condition*:

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

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

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

THAT 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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on January 28, 2014.

231-13-A

APPLICANT – Nikolaos Sellas, for Double T Corp., owner.
SUBJECT – Application August 8, 2013 – Proposed construction of a six-story residential building located within the bed of a mapped street (29th Street), contrary to General City Law Section 35. R6A/R6B zoning district.

PREMISES AFFECTED – 29-15 Newtown Avenue, northeasterly side of Newtown Avenue, 203.19' northwesterly from the corner formed by the intersection of Newtown Avenue and 30th Street, Block 596, Lot 9, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839169, reads in pertinent part:

Proposed construction partially located in bed of mapped street as per GCL 35; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

WHEREAS, an application for the adjacent site, Lot 7, was decided on the same date, pursuant to BSA Cal. No. 230-13-A (29-19 Newtown Avenue, Queens); and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, this is an application to allow the construction of six-story multiple dwelling partially within the bed of 29th Street, a mapped but unbuilt street; and

WHEREAS, the subject site is located on the east side of Newton Avenue between 28th Street and 30th Street, partially within an R6A zoning district and partially within an R6B zoning district; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, by letter dated September 3, 2013, the Fire Department states that it has reviewed the proposal and has no objection to its approval; and

WHEREAS, by letter dated September 11, 2013, the

Department of Environmental Protection (“DEP”) states that: (1) there is a 12-inch diameter private combined sewer and an eight-inch diameter city water main in 29th Street between Newton Avenue and Astoria Boulevard; and (2) Amended Drainage Plan, dated February 15, 1935, sheet 1 of 3, for the above referenced location, calls for a future 12-inch diameter combined sewer in the bed of 29th Street between Newton Avenue and Astoria Boulevard; and

WHEREAS, DEP’s letter further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped 29th Street and the width of the widening portion of the street at the above referenced location; and (2) the distance from the lot line of Lot 7 to the terminal manhole of the 12-inch diameter private combined sewer, the end cap of the eight-inch diameter city water main, and the hydrant in the bed of 29th Street, between Newton Avenue and Astoria Boulevard; and

WHEREAS, in response to DEP’s request, the applicant submitted an updated survey; and

WHEREAS, by letter dated November 25, 2013, DEP states that, based on the survey submitted by the applicant, the future 12-inch diameter combined sewer crossing Lot 7 and Lot 9 will not be required, and, therefore, DEP has no objection to the proposed applications; and

WHEREAS, by correspondence dated January 17, 2014 the Department of Transportation (“DOT”) states that it has reviewed the proposal and has no objections; and

WHEREAS, the DOT notes that according to the Queens Borough President’s Topographical Bureau: (1) Newton Avenue from 28th Street to 30th Street is a mapped street with width of 70 feet on the City Map and was acquired to full width on July 11, 1914; (2) 29th Street between Astoria Avenue and Newton Avenue has a Corporation Counsel Opinion of dedication for 37 feet, as in use on May 2, 1922; and (3) the portion of 29th Street within the proposed development site is mapped at a width of 45 feet width on the City Map and the City does not have title; and

WHEREAS, DOT also notes that the improvement of 29th Street at this location (Block 596, Lot 9) is not presently included in DOT’s Capital Improvement Program; and

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

Therefore it is Resolved, that the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839169, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked “Received January 22, 2014” one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations will be complied with; and *on further condition*:

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

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DOB/other jurisdiction objection(s);

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

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

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

Adopted by the Board of Standards and Appeals on January 28, 2014.

166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

348-12-A & 349-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Starr Avenue Development LLC, owner.

SUBJECT – Application December 28, 2012 – Proposed construction of two one-family dwellings located within the bed of a mapped street, contrary to General City Law, Section 35. R2 zoning district.

PREMISES AFFECTED – 15 & 19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot 67, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for deferred decision.

98-13-A

APPLICANT – Eric Palatnik, P.C., for Scott Berman, owner.

SUBJECT – Application April 8, 2013 – Proposed two-story two family residential development which is within the unbuilt portion of the mapped street on the corner of Haven Avenue and Hull Street, contrary to General City Law 35. R3-1 zoning district.

PREMISES AFFECTED – 107 Haven Avenue, Corner of Hull Avenue and Haven Avenue, Block 3671, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for adjourned hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7-2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for adjourned hearing.

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings' interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

COMMUNITY BOARD #7M

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

156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31st Street Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C6-4/HY zoning district.

PREMISES AFFECTED – 450 West 31st Street, West 31st

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Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #10M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

214-13-A

APPLICANT – Slater & Beckerman, P.C., for Jeffrey Mitchell, owner.

SUBJECT – Application July 15, 2013 – Appeal seeking a determination that the owner has acquired a common law vested right to complete construction under the prior R3-2 zoning district. R3-X zoning district.

PREMISES AFFECTED – 219-08 141st Avenue, south side of 141st Avenue between 219th Street and 222nd Street, Block 13145, Lot 15, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

300-13-A

APPLICANT – Goldman Harris LLC, for LSG Fulton Street LLC, owner.

SUBJECT – Application November 7, 2013 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C5-5/C6-4 zoning district.

PREMISES AFFECTED – 112,114 & 120 Fulton Street, Three tax lots fronting on Fulton Street between Nassau and Dutch Streets in lower Manhattan. Block 78, Lot(s) 49, 7501 & 45. Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

279-12-BZ

APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 22, 2012, acting on Department of Buildings Application No. 420511495, reads in pertinent part:

Office use (UG 6) in R4/R5B is contrary to ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 20, 2012, after due notice by publication in the *City Record*, with continued hearings on November 19, 2013 and December 17, 2013, and then to decision on January 28, 2014; and

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

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

WHEREAS, the subject site is located at the northwest corner of the intersection of College Point Boulevard and 28th Avenue, partially within an R4 zoning district and partially within an R5B zoning district; and

WHEREAS, the site has approximately 66 feet of frontage along College Point Boulevard, approximately 131 feet of frontage along 28th Street, and a lot area of 5,765 sq. ft. (1,845 sq. ft. within the R4 district and 3,919 sq. ft. within the R5B district); and

WHEREAS, the site is occupied by a vacant, two-story

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building with approximately 3,760 sq. ft. of floor area; and

WHEREAS, the applicant represents that from approximately 1947 until 2011, the building and site were occupied by a gasoline and automotive service station (Use Group 16) on the first story and a single-family dwelling on the second story; the applicant notes that the site has been subject to the Board's jurisdiction since 1947, when the Board granted a variance under BSA Cal. No. 359-47-BZ to permit the station; such grant expired in 1985 and was reinstated under BSA Cal. No. 5-00-BZ, for a term of ten years; the 2000 grant expired on October 3, 2010; and

WHEREAS, the applicant proposes to construct the following at the site: a two-story commercial building with 5,082 sq. ft. of floor area (0.88 FAR) to be occupied as a bank (Use Group 6); an accessory parking lot with five spaces; and a drive-through for bank services; and

WHEREAS, because Use Group 6 is not permitted within the subject residence districts (R4 and R5B, as noted above), the subject use variance is requested; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: (1) the site's contamination; and (2) the site's proximity to manufacturing uses; and

WHEREAS, the applicant states that underground gasoline storage tanks were maintained in connection with the gasoline and automotive service station, and that the presence of such tanks resulted in subsurface contamination; such contamination, in turn, led to the development and implementation of a remediation plan under the supervision of the New York State Department of Environmental Conservation; and

WHEREAS, in support of this statement, the applicant provided estimates of costs associated with remediation of the site; and

WHEREAS, as to the adjacency of manufacturing uses, the applicant states that the site is located directly across the street from M1-1 and M1-2 zoning districts, which are occupied with industrial uses that render the site unsuitable for conforming uses; and

WHEREAS, in particular, the applicant states that there are five corner lots (including the subject site) at the intersection of 28th Avenue and College Point Boulevard and that all five contain manufacturing, industrial or automotive uses; accordingly, a residential or community facility building would have to be offered at discounted rates that would be insufficient to offset the costs of remediation and the inefficiencies inherent in developing a trapezoidal site; and

WHEREAS, based upon the above, the Board finds that the site's contamination and proximity to manufacturing uses create unnecessary hardship and practical difficulty in developing the site in conformance with use regulations; and

WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right mixed residential and community facility building; (2) an as-of-right community facility building; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the costs associated with remediation of the contaminated site; and

WHEREAS, in response, the applicant submitted detailed calculations and an itemized cost breakdown; and

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

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

WHEREAS, the applicant represents that the immediate area is characterized by low- to medium-density commercial and manufacturing uses; and

WHEREAS, the applicant states that there are non-conforming commercial and manufacturing uses on the two blocks directly north and directly south of the site along College Point Boulevard, and that the areas south and east of the site are almost exclusively commercial and manufacturing; and

WHEREAS, the applicant acknowledges that its two immediately adjacent lots are occupied by a mixed residential and commercial building on Block 4292, Lot 11 (which is directly north of the site) and a single-family residence on Block 4292, Lot 75, which is directly west of the site; however, the applicant states that the proposed bank office use is harmonious with a residential neighborhood, in that it has regular, daytime business hours and does not create any noise, traffic, or air quality impacts; further, the applicant has located the bank building on the southeastern-most corner of the lot and provided appropriate buffering measures, including a six-foot opaque fence with plantings; and

WHEREAS, the applicant also notes that the proposal has the support of a nearby homeowner's association; and

WHEREAS, the applicant represents and the Board agrees that the proposed bank (including its drive-through) will have significantly less traffic impacts on the neighborhood than the gasoline and automotive service station that previously occupied the site; and

WHEREAS, finally, the applicant states that a manufacturing use has occupied the site for nearly 70 years and that the change to office use brings the site more into conformance with the site's R4/R5B designation and its nearby residential uses; and

WHEREAS, at hearing, the Board directed the applicant to clarify the need for the second story and the drive-through, and their impacts on the parking requirements of the bank; and

WHEREAS, in response, the applicant submitted a

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letter from the prospective tenant of the space, which stated that both the second floor and the drive-through are essential to its banking operations; according to the bank, the second floor would provide space for loan officers and customer service representatives to meet with patrons but would not increase the number of employees working at the branch; as such, the second floor has no impact on the parking requirements of the bank; in addition, the applicant provided a parking survey that demonstrated the proposed five spaces would, in light of nearby on-street parking, be adequate to accommodate the expected parking demand of the bank; and

WHEREAS, as for the drive-through, the applicant states that it is an amenity that would be particularly desirable for its local patrons, who tend to be automobile-oriented; and

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

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from the shape of the site, its contamination, and its proximity to manufacturing uses; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents and the Board agrees that, per ZR § 72-21(e), the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

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

WHEREAS, the project is classified as an as unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 13-BSA-034Q, dated September 19, 2012; and

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

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

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

Therefore it is Resolved, that the Board of Standards and

Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2013"– (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: two stories; a maximum floor area of 5,082 sq. ft. (0.88 FAR); a maximum height of 26'-10"; a maximum lot coverage of 2,541 sq. ft.; and five accessory parking spaces;

THAT the building will be used as a bank;

THAT any change in use of the building will be subject to the Board's approval;

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

THAT signage will comply with C1 district regulations;

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 substantial construction will proceed in accordance with ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

81-13-BZ

APPLICANT – Nasir J. Khanzada, for Aqeel Klan, owner.
SUBJECT – Application February 28, 2013 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses, which expired on November 6, 1992; Amendment (§11-413) to permit the change of use from auto service station to auto repair (UG 16B) with accessory auto sales; Waiver of the Rules. R2 zoning district.

PREMISES AFFECTED – 264-12 Hillside Avenue, Block 8794, Lot 22, Borough of Queens.

COMMUNITY BOARD # 13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, a reinstatement, a change in use, and an extension of term for the continued use of an automotive repair facility, which expired on November 6, 1992; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013 and December 10, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, the site is located at the northeast corner of Hillside Avenue and 265th Street within an R2 zoning district; and

WHEREAS, the site has 100 feet of frontage along Hillside Avenue, 100 feet of frontage along 265th Street, 10,000 sq. ft. of lot area, and is occupied by a one-story commercial building used for automotive repairs; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 1958, when, under BSA Cal. No. 59-57-BZ, the Board granted a use variance to permit in a retail use district, the construction of a gasoline service station with office, sales, a lubricatorium, car washing, minor auto repairs, parking and storage of motor vehicles within 75 feet of a residence use district; and

WHEREAS, the grant was subsequently amended at various times; most recently, on October 12, 1983, the Board granted an extension of term for ten years to expire on November 6, 1992; and

WHEREAS, the applicant now seeks to reinstate the variance granted under BSA Cal. No. 59-57-BZ; and

WHEREAS, the applicant does not propose to enlarge the existing building and proposes to make certain improvements to the site conditions and to provide the following uses: automotive repair (Use Group 16B) with accessory office, limited automotive sales, lubricatorium, and hand washing; and

WHEREAS, the Board notes that, under its Rules, an applicant requesting reinstatement of a pre-1961 use variance must demonstrate that: (1) the use has been continuous since the expiration of the term; (2) substantial prejudice would result if reinstatement is not granted; and (3) the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, as to continuity, the applicant represents that, although the term expired in 1992, the automotive use has been continuous from 1957 to the present; in support of this representation, the applicant submitted documentation

including a letter related to the gasoline service use from 1995 and the removal of the gasoline storage tanks in 2003, evidence of signage at the site, utility, and an affidavit from a neighbor noting observations of the existence of the use since 1996; and

WHEREAS, further, the applicant represents that substantial prejudice would result if reinstatement is not granted, because the site is occupied by an established business that would be required to cease operations; and

WHEREAS, as to the whether the existing use substantially impairs the appropriate use and development of adjacent properties, the applicant asserts that the garage has operated continuously at the site and has not increased in intensity since its establishment; further, the applicant notes that the historic building form has a peaked roof and brick façade, which is harmonious with the nearby residential character; and

WHEREAS, the applicant also asserts that the use of the site complies with all other findings related to its continued use: (1) the site has an area greater than 7,500 sq. ft.; (2) the facilities for lubrication and minor repairs are located within a completely enclosed building; (3) the site includes reservoir space for four autos awaiting repair as well as three employee parking spaces, one space for hand washing of autos, and two accessory car sales spaces; (4) the community is benefited by having a New York State inspection and auto repair facility; (5) by eliminating the gasoline service at the site, traffic in and out of the site has decreased; and (6) there is screening along lot lines shared with residential use; and

WHEREAS, at hearing, the Board raised concern about (1) the condition of the perimeter brick wall including the presence of graffiti; (2) the presence of temporary signs and excessive signage; (3) the insufficiency of plantings; and (4) the nature of the automotive sales; and

WHEREAS, in response, the applicant provided (1) photographs reflecting the removal of graffiti; (2) the removal of temporary signage and other signage that was inconsistent with the original Board approval; (3) plans for the inclusion and maintenance of plantings; and (4) an explanation that the automotive sales use is limited and related to autos that have been repaired onsite and available for purchase; and

WHEREAS, the applicant states that there will be a total of three active employees on site and the hours of operation will be: Monday through Friday, 6:00 a.m. to 6:00 p.m.; Saturday, 10:00 a.m. to 5:00 p.m.; and Sunday, 10:00 a.m. to 1:00 p.m.; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term of an expired variance; and

WHEREAS, based on the applicant's representations, the Board finds that reinstatement of the subject variance is appropriate for a term of ten years is appropriate; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review

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and makes each and every one of the required findings under ZR § 11-411 to permit, within an R2 zoning district, the reinstatement of a prior Board approval for an automotive service station at the subject site, *on condition* that any and all work will substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received January 14, 2014'- (3) sheets; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on January 28, 2024;

THAT the layout of the site and the landscaping will be as reflected on the BSA-approved plans;

THAT the hours of operation will be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.; Saturday, 10:00 a.m. to 5:00 p.m.; and Sunday, 10:00 a.m. to 1:00 p.m.;

THAT signage will not exceed that reflected on the BS-approved plans;

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

THAT the number of automobiles parked on the site will be limited to those reflected on the BSA-approved plans;

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

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

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

(DOB Application No. 420551922)

Adopted by the Board of Standards and Appeals, January 28, 2014.

167-13-BZ

CEQR #13-BSA-147K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Michael Calabrese, owner.

SUBJECT – Application June 4, 2013 – Variance (§72-21) to permit the enlargement of an existing one-story automobile sales establishment, contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1614/26 86th Street and Bay 13 Street, southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 5, 2013, acting on Department of

Buildings Application No. 320748045, reads in pertinent part:

Enlargement to an existing one story automobile sales establishment (UG 16) in an R5 zoning district is contrary to Sections 22-10 ZR and 52-40. Prior variance under Cal. No. 103-94-BZ has expired; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the enlargement of an existing one-story building occupied by an automotive sales establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR §§ 22-10 and 52-40; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 86th Street and Bay 13th Street within an R5 zoning district; and

WHEREAS, the site has approximately 120 feet of frontage on 86th Street and 86 feet of frontage on Bay 13th Street, with a total lot area of 10,320 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building with 2,434 sq. ft. of floor area (0.24 FAR) used for an automotive dealership (Use Group 16) and open display of vehicles on the remainder of the lot; and

WHEREAS, the building was completed in 1958 pursuant to a variance adopted by the Board on May 7, 1957 under BSA Cal. No. 113-56-BZ, which allowed in business and residence use districts the construction of a gasoline service station, auto washing, lubrication, office, accessory sales, minor repairs with hand tools, parking and storage of more than five motor vehicles, and signs within 75 feet of the residence use district; and

WHEREAS, the term of the variance was extended in 1972 and again in 1983; in 1985, the variance was amended to eliminate the gasoline service station uses and limit the occupancy to automobile sales and accessory parking, including construction of an enlargement to the existing building; and

WHEREAS, on March 30, 1993, the variance was extended to expire on May 7, 2002; however, in 1995, pursuant to BSA Cal. No. 103-94-BZ, the Board granted a new variance application to allow for a one-story enlargement to an existing one-story building used for automobile sales; and

WHEREAS, the proposed enlargement allowed for expansion of the building to the western lot line and was designed to enclose the automobile sales and reduce the visual impact of the existing use; the variance included a 20-year

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term to expire on June 20, 2015; and

WHEREAS, the enlargement was never constructed and, ultimately, after the issuance of a new Certificate of Occupancy, which referenced BSA Cal. No. 103-94-BZ, it was discovered that the building and approval pursuant to BSA Cal. No. 113-56-BZ had not been superseded; and

WHEREAS, the applicant now proposes to enlarge the existing one-story building used for automobile sales as was previously approved by the Board under BSA Cal. No. 103-94-BZ; and

WHEREAS, the proposed enlargement would increase the size of the existing building to 5,184 sq. ft. (0.5 FAR) (1.0 FAR is the maximum permitted for a conforming use); and

WHEREAS, because the automotive sales use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the enlargement of the Use Group 16 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of the site for automotive use; (2) the obsolescence of the subject building, built in 1957, for the existing use; and (3) the location on a commercial thoroughfare; and

WHEREAS, as to the history of use and the existing building, the applicant states that the building was designed for automotive uses and operated for such uses from at least 1957 to the present; and

WHEREAS, the applicant represents that the use has been established at the site for more than 50 years and that due to its history of automotive use and associated soil contamination it is precluding from performing significant excavation or creating a cellar; and

WHEREAS, the applicant states that as of right development would require complete demolition of the existing building and would likely involve significant environmental remediation for any below grade excavation due to the historic automotive use, which pre-dates modern environmental regulations; and

WHEREAS, the applicant notes that the proposed construction requires minimal soil disturbance, while allowing the use established by the variance and in continuous existence at the site, in some form, for more than 50 years to continue; and

WHEREAS, as to the existing building, the applicant notes that the current size and L-shape of the building, which has not been altered for almost 30 years, is too constrained to accommodate a modern automotive dealership; and

WHEREAS, the applicant notes that the size is insufficient compared to the standards of automotive dealerships in the immediate vicinity; and

WHEREAS, at the Board's request, the applicant performed an analysis of nearby automotive dealerships and concluded that when compared to the automotive dealerships within 1.7 miles of the site, the existing building is significantly smaller than all others; specifically, the other showrooms have floor area ranging from 4,950 sq. ft. to

20,150 sq. ft. – which is twice to ten times as large as the existing building; and

WHEREAS, further, the applicant concluded that the FAR for the other showrooms is well in excess of the existing 0.23 FAR and the proposed 0.5 FAR, which would be comparable to the smallest of the nearby showrooms; and

WHEREAS, as to the building's shape, the applicant notes that it is an irregular L-shape and that half of the building is set back from the street frontage in a way that diminishes marketability and street presence; and

WHEREAS, the applicant proposes to square-off the building, as proposed in 1994, so as to have a rectangular-shaped building which allows for increased visibility at the 86th Street frontage and also allows for improved circulation within the building; and

WHEREAS, primarily, the applicant states that the small size of the existing building precludes it from attracting major automotive companies, due to the inability to meet their design and marketing standards; and

WHEREAS, the applicant represents that an automotive company's model requires a regularly-shaped building with high visibility for its showroom from passersby; and

WHEREAS, the applicant represents that the lack of space creates a hardship in maintaining the existing building for a feasible automotive sales use; and

WHEREAS, the applicant notes that the proposed enlargement is consistent with the Board's approval for an enlargement and that the need for the enlargement remains the same as at the time of the 1994 approval; and

WHEREAS, the applicant asserts that the building is unusually-shaped and, as evidenced by the conclusion nearly 20 years ago, that it was obsolete for modern use; no change has occurred since the 1994 grant and, the applicant asserts that the conditions underlying the 1994 grant remain or have become worse; and

WHEREAS, as to the location, the applicant states that the site has 120 feet of frontage along 86th Street and that this portion of 86th Street is a busy, predominantly commercial street, which constrains the feasibility of conforming residential development; and

WHEREAS, the applicant notes that the north side of 86th Street is within a C8-1 zoning district and is occupied by commercial and even some manufacturing use; the block to the north across Bay 13th Street has a C1-2 zoning district overlay and is also occupied by commercial use; and

WHEREAS, based upon the above, the Board finds that the history of the site, and the characteristics of the historic building and its use are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that the current proposal to enlarge the building is the same as the 1994 proposal to enlarge the building, which the Board approved, but was never constructed; and

WHEREAS, accordingly, the Board concludes that the hardship of trying to accommodate a modern automotive

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dealership in the historic automotive services building has only become more pronounced; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a 2,445 sq. ft. automotive sales and showroom building with outdoor storage, like the existing conditions; and (2) the proposed 5,195 sq. ft. automotive sales and showroom building; and

WHEREAS, the study concluded that the existing model would not result in a reasonable return, but that the proposed enlargement would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant asserts that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the site is immediately adjacent to two commercial zoning districts: (1) to the north across 86th Street is a C8-1 zoning district where the automotive sales use would be permitted as of right and (2) to the east across Bay 13th Street is a C1-2 zoning district; and

WHEREAS, the applicant states that the surrounding portion of 86th Street is predominantly commercial in nature and the adjacent corner on 86th street and Bay 13th Street is occupied by a bank; and

WHEREAS, the applicant also notes that automotive use – either gasoline sales, service, or sales – has been present at the site, pursuant to the Board's grants for more than 50 years and that the proposed use will not increase the intensity of activity on the site, but rather enclose portions of a use that has been historically open and, thus, render it more compatible with other uses within the subject R5 zoning district; and

WHEREAS, the applicant asserts that the proposed enlargement would reduce the impact of the non-conforming use on the surrounding neighborhood, enclosing an open portion of the lot that contains vehicles, and while the variance includes an enlargement of the building, it does not include an enlargement or extension of the use, which will continue to occupy the entire zoning lot; and

WHEREAS, the applicant asserts that enlarging the showroom reduces the unenclosed sales area and will reduce the number of cars stored on the lot and will improve the appearance and operation of the site, more consistent with enclosed uses typically permitted in C1 and C2 zoning districts; and

WHEREAS, specifically, the applicant notes that the enlargement of the building will be along the western portion of the site adjacent to commercial use and will replace the open display of vehicles with an enclosed showroom that is more compatible with residential use; and

WHEREAS, as to bulk, the applicant notes that the C8-1 zoning district across the street would allow 1.0 FAR for the

automotive dealership use and that 1.0 FAR is the maximum permitted FAR for a conforming use in the subject R5 zoning district, thus, the proposed 0.5 FAR is compatible from a bulk perspective; and

WHEREAS, at hearing, the Board raised the following concerns: (1) whether the landscaping and buffering with the adjacent residential use was sufficient; (2) whether the signage complies with C1 zoning district regulations; (3) that there are excess banners; and (4) that there are excess vehicles on the site; and

WHEREAS, as noted, the Board also asked the applicant for an analysis of the parameters of other automotive dealerships in the area to establish the context for such use; and

WHEREAS, in response to the Board's concerns, the applicant submitted (1) a revised site plan reflecting increased landscaping and buffering with the adjacent residential use and a planted area at the front of the building; (2) a note that all future signage will comply with C1 zoning district signage regulations, rather than the C8-1 zoning district regulations as initially proposed; (3) photographs of the site reflecting the elimination of excess banners and the removal of graffiti; and (4) a response that excess vehicles had been removed and would be stored at a facility across the street, by agreement with the owner; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's historic use and conditions; and

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

WHEREAS, based upon the above, 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 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. 13-BSA-147K dated May 31, 2013; and

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

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

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Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R5 zoning district, the enlargement of an existing one-story building occupied by an automotive sales establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR §§ 22-10 and 52-40; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 22, 2014” – (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged building: a total floor area of 5,184 sq. ft. (0.5 FAR); a total height of 17'-0”, a side yard with a minimum depth of 5'-0” along the southern lot line, as illustrated on the Board-approved plans;

THAT the hours of operation will be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m.; Friday and Saturday, 9:00 a.m. to 6:00 p.m.; and Sunday, 11:00 a.m. to 6:00 p.m.;

THAT signage on the site will comply with C1 district regulations;

THAT all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans;

THAT the parking layout be as reflected on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

218-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 37 W Owner LLC; Ultrafit LLC, lessee.

SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Ultrafit*). C6-3A zoning district.

PREMISES AFFECTED – 136 Church Street, southwest corner of the intersection formed by Warren and Church Streets in Tribeca, Block 133, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 16, 2013, acting on Department of Buildings (“DOB”) Application No. 103703789, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is not permitted as-of-right in a C6-3A zoning district pursuant to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-3A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the cellar and ground floor levels of an 11-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 10, 2013 after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

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

WHEREAS, the subject site is located at the southwest corner of the intersection of Church Street and Warren Street, within a C6-3A zoning district within the Special Tribeca Mixed Use District; and

WHEREAS, the site has approximately 100 feet of frontage along Church Street, approximately 50 feet of frontage along Warren Street, and 5,029 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 11-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy approximately 2,686 sq. ft. of floor area on the ground floor of the building and 1,188 sq. ft. of floor space in the cellar, for a total PCE floor space of 3,784 sq. ft.; and

WHEREAS, the PCE will be operated as Ultrafit, LLC; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 5:00 a.m. to 11:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and

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issued a report which the Board has determined to be satisfactory; and

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify the sound attenuation measures that will be provided, given that the building will contain residences; and

WHEREAS, in response, the applicant submitted a report from its acoustical consultant, which detailed the noise attenuation measures that will be provided; in addition, the plans have been amended to reflect that such noise attenuation measures that will be provided; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA011M dated July 18, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-3A

zoning district, the operation of a PCE on portions of the cellar and ground floor levels of an 11-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 24, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

THAT that the hours of operation of the PCE will be limited to daily, from 5:00 a.m. to 11:00 p.m.;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

255-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 3560 WPR LLC & 3572 WPR LLC, owner; Blink Williamsbridge, Inc., lessee.

SUBJECT – Application September 5, 2013 – Special Permit (§73-36) to permit the operation of a physical culture (*Blink Fitness*) establishment within an existing commercial building. C2-4 (R7-A) zoning district.

PREMISES AFFECTED – 3560/84 White Plains Road, East side of White Plains Road at southeast corner of intersection of White Plains Road 213th Street. Block 4657, Lot(s) 94, 96. Borough of Queens.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough
Commissioner, dated August 22, 2013, acting on
Department of Buildings (“DOB”) Application No.
103703789, reads in pertinent part:

Proposed physical culture establishment in a C2-4
(R7A) district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36
and 73-03, to permit, on a site located in a C2-4 (R7A)
zoning district, the operation of a physical culture
establishment (“PCE”) in portions of the first and second
story of a two-story commercial building, contrary to ZR §
32-10; and

WHEREAS, a public hearing was held on this
application on December 17, 2013, after due notice by
publication in *The City Record*, and then to decision on
January 28, 2014; and

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

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

WHEREAS, the subject site comprises adjacent tax
lots (Lots 94 and 96) and spans the east side of White Plains
Road between East 212th Street and East 213th Street,
within a C2-4 (R7A) zoning district; and

WHEREAS, the site has 71.34 feet of frontage along
East 212th Street, 200.67 sq. ft. along White Plains Road,
55.19 feet of frontage along East 213th Street, and 12,350
sq. ft. of lot area; and

WHEREAS, the site is occupied by two two-story
buildings, which are proposed to be combined into a single
building; and

WHEREAS, the applicant states that the PCE is
proposed to occupy a portion of the first story (3,962 sq. ft. of
floor area) combined building and the entirety of the second
story (11,942 sq. ft.), for a total PCE floor area of 15,904 sq.
ft.; and

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

WHEREAS, the applicant represents that the services
at the PCE include facilities for classes, instruction and
programs for physical improvement, body building, weight
reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be
Monday through Thursday, from 5:00 a.m. to 11:00 p.m.,
Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and
Sunday, from 7:00 a.m. to 7:00 p.m.; and

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

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

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

WHEREAS, at hearing, the Board requested
clarification regarding whether windows at the rear of the
building would be maintained and whether the existing
parking at the site was required; and

WHEREAS, in response, the applicant indicated
that the windows would be sealed prior to the occupancy of
the PCE and that the parking was provided prior to 1961 and
that, as such, it was not required; and

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

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

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

WHEREAS, the Board has conducted an environmental
review of the proposed action discussed in the Environmental
Assessment Statement, CEQR No. 14BSA033X, dated
September 3, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and
Appeals issued a Negative Declaration prepared in accordance
with Article 8 of the New York State Environmental
Conservation Law and 6 NYCRR Part 617 and § 6-07(b)
of the Rules of Procedure for City Environmental Quality
Review and Executive Order No. 91 of 1977, as amended, and
makes each and every one of the required findings under ZR
§§ 73-36 and 73-03 to permit, on a site located in a C2-4
(R7A) zoning district, the operation of a PCE in portions of
the first and second story of a two-story commercial
building, contrary to ZR § 32-10; *on condition* that all work

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shall substantially conform to drawings filed with this application marked "Received October 24, 2013" – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

292-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough

Commissioner, dated October 21, 2013, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

1. Proposed Floor Area exceeds the maximum allowed pursuant to ZR Sections 113-11, 23-141b, 23-17, 23-11, 24-17, 77-22
2. Proposed Open Space is less than minimum required pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-23
3. Proposed Lot Coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-24
4. Proposed Front Yard is less than minimum required pursuant to ZR Sections 113-12, 23-45 and does not comply with planting requirements in ZR Section 23-451
5. Proposed Level of Front Yard is higher than level permitted pursuant to ZR Section 23-42
6. Proposed Front Yard does not comply with landscaping regulations per ZR 113-30
7. Proposed Rear Yard is less than rear yard required pursuant to ZR Sections 113-11b and 24-36
8. Proposed Side Yards are less than required pursuant to ZR Sections 113-11, 23-464
9. Proposed new building exceeds maximum Height and Setback requirements pursuant to ZR Sections 113-11, 23-631d, 24-17, 24-593, 23-633a2, 77-28
10. Proposed Side and Rear Yard Setbacks are less than required pursuant to ZR Sections 113-11 and 23-662
11. Proposed development provides less than required parking spaces pursuant to ZR Sections 113-561, 25-31, 25-35
12. Proposed clerestory exceeds max height for permitted obstructions pursuant to ZR Sections 113-11 and 23-62(l); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-11, 23-141, 23-17, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-62, 23-633, 23-662, 24-11, 24-17, 24-351, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2013, and then to decision on January 28,

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2014; and

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

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

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about the bulk and potential impact on light and air and potential noise impact associated with the building's mechanicals; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the "Synagogue"), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, on October 16, 2012, the Board granted a variance application pursuant to ZR § 72-21, under BSA Cal. No. 168-11-BZ, to permit the construction of a four-story synagogue on Block 7109, Lot 50 (formerly Lots 48 and 50) (the "Prior Variance"); the Prior Variance reflected a building with a maximum floor area of 20,461 sq. ft. (2.3 FAR), a maximum wall height of 60'-0" and a total height of 62'-4", a minimum open space of 1,866 sq. ft., and a maximum lot coverage of 6,968 sq. ft. (79 percent); and

WHEREAS, the applicant represents that construction pursuant to the Prior Variance has not commenced; and

WHEREAS, the applicant represents that subsequent to the Prior Variance, the Congregation purchased the adjacent Lot 56, which resulted in a redesign of the building and requires a new approval for the synagogue on combined Lots 50 and 56 that more fully meets the needs of the growing Congregation; and

WHEREAS, the merged lot has a total lot area of 14,840 sq. ft.; it was formerly occupied by a two-story home on former Lot 50 and a two-story home on former Lot 48, both of which were unoccupied and sealed at the time of purchase, and the newly-acquired Lot 56 is currently occupied by a two-story residence; and

WHEREAS, the inclusion of Lot 56 increases the lot area of the zoning lot from 8,840 sq. ft. to 14,840 sq. ft., which allows for construction of a larger synagogue building with a more accommodating layout; and

WHEREAS, the applicant proposes the following parameters: two/three stories; a floor area of 22,314 sq. ft. (1.5 FAR) (a maximum community facility floor area of 21,815 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.47 FAR is permitted); a lot coverage of 63 to 72 percent (maximum permitted lot coverage ranges from 45/55 to 60 percent); an open space of 28 to 36

percent (the minimum required open space ranges from 38 to 45 percent); a maximum wall height of 47'-10" and a maximum total height of 62'-0" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); the clerestory (skylight over the third floor) to a height of 57'-3", which is 9'-5" above the roof of the three-story front portion of the building (exceeds the maximum height of a permitted obstruction); the proposed level of the front and rear yards 3'-4" above the permitted curb level; and no parking spaces (a minimum of 23 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a new building height of 70'-0"; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the building height to 59'-5" at the roof ridge in the R5 corner portion of the lot and to 62'-0" in the R6A interior lot portion of the site; and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a side yard with a width of 8'-0" on the corner portion adjacent to the neighbor on Ocean Parkway; and a rear yard with a depth of 30'-0" on the L-shaped portion of the lot within the subdistrict, but no front yard in the interior portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) a social hall, men's mikvah, and a kitchen at the cellar level; (2) the main men's sanctuary and Bet Midrash (accessory prayer room) and a Brit Milah at the first floor; (3) the women's sanctuary balcony, a kitchenette (warming pantry), boys' and girls' minyans (accessory prayer room) on the second floor; and (4) a young adult minyan, a board room, and two offices at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would have the following restrictions: a total height of 49'-0", a front yard of 30'-0" along Ocean Parkway, a front yard of 10'-0" along Avenue U, and a side yard of 13'-10"; it would allow for a social hall of only 3,090 sq. ft.; a main men's sanctuary of 1,250 sq. ft. (to accommodate 208 people); and a main women's sanctuary of 645 sq. ft. (to accommodate 120 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that only one Bet Midrash could be provided, instead of three, and a men's

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mikvah space could not be provided; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk on certain days for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 143'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, as far as the changes from the proposal associated with the Prior Variance and the current proposal, the applicant states that the current proposal decreases the relief sought for FAR from 2.3 to 1.5 (1.47 FAR is the maximum permitted), open space, and lot coverage; and

WHEREAS, the applicant asserts that the proposed more uniform floor plate allows for a more functional floor layout and better circulation between the social hall, kitchen, and accessory storage; and

WHEREAS, further, the applicant notes that the modified proposal will allow for a total occupancy of 329 people in the social hall, rather than 221 people as approved by the Prior Variance; the current proposal also allows for a larger men's mikvah to be located at the cellar level rather than the first floor, as approved by the Prior Variance; and

WHEREAS, the applicant states that Jewish Law prescribes that congregants face east while praying, thus, the circular shape and downward sloping angle of the main sanctuary is designed in such a way to observe this religious

requirement while also increasing the floor area from the main sanctuary previously approved, which was located on the second floor; and

WHEREAS, the applicant notes that the new first floor design allows for a Bet Midrash (accessory prayer room) and a Brit Milah room, which are critical spaces for an Orthodox synagogue but could not be accommodated in the smaller building approved through the Prior Variance; and

WHEREAS, the applicant states that now the women's sanctuary balcony is on the second, rather than third floor and has an increase in occupancy of 31 people from 192 to 223 people and that the new design allows for three prayer rooms for young people; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition; and the requirements for mechanical space, which contribute to the hardship at the site; and

WHEREAS, the applicant acknowledges that the Congregation created the irregular L-shape by merging two adjacent lots (former Lots 50 and 48), but that this lot area is critical to providing adequate space for a synagogue building with sufficient size to meet the programmatic needs; and

WHEREAS, further, the applicant notes that absent the lot merger, the 130'-0" depth and 18'-0" width of the easternmost portion of the site fronting on Avenue U presents unique physical conditions which support the request for waivers; and

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

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-

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profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, specifically, the applicant states that there are eight buildings with a height of 62'-0" or greater within its study area; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the former homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 8'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, the applicant also notes that unlike in the Prior Variance, no portion of the current proposal is located in the R5 (Special Ocean Parkway Subdistrict) portion of the site located to the rear of the adjacent homes; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 143'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, in response to concerns the Board raised about the planting requirement along Ocean Parkway, the applicant increased the percentage of yard plantings from 41 percent to 50.1 percent; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to questions raised about the proposed emergency generator, the applicant responded that it will only be used in the event of an emergency (and subject to a test for functioning once per month) and the sound level will be similar to existing sound levels in the surrounding neighborhood; and

WHEREAS, the applicant also notes that it proposed baffling with a height of 12'-0", which is the minimum height to adequately buffer the HVAC equipment on the roof, thus, lowering the height is not feasible; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14BSA060K, dated October 23, 2013; and

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

WHEREAS, no other significant effects upon the

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environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-11, 23-141, 23-17, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-62, 23-633, 23-662, 24-11, 24-17, 24-351, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 3, 2013" – Seventeen (17) sheets; and *on further condition*:

THAT the building parameters will be: two/three stories; a maximum floor area of 22,314 sq. ft. (1.5 FAR); a maximum wall height of 47'-10" and total height of 62'-0"; a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot; and a maximum lot coverage of 64 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the BSA-approved plans;

THAT sound attenuation measures be installed and maintained as reflected on the BSA- approved plans;

THAT landscaping be maintained as reflected on the BSA-approved plans;

THAT any change in control or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

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

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

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

THAT construction will proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

54-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for adjourned hearing.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for deferred decision.

76-13-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Pometko, owner.

SUBJECT – Application February 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141), side yards (§23-461), and less than the minimum required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 176 Oxford Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

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78-13-BZ

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for deferred decision.

92-13-BZ & 93-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for FHR Development LLC, owner.

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings, contrary to required rear yard regulation (§23-47). R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

95-13-BZ

APPLICANT – Eric Palatnik, PC, for Lai Ho Chen, owner; Tech International Charter School, lessee.

SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) at the second floor, contrary to §24-162. R6/C1-3 and R6 zoning districts.

PREMISES AFFECTED – 3120 Corlear Avenue, Corlear Avenue and West 231st Street, Block 5708, Lot 64, Borough of Bronx.

COMMUNITY BOARD #8BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

128-13-BZ

APPLICANT – Sheldon Lobel, PC, for Zev and Renee Marmustein, owner.

SUBJECT – Application May 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); side yards (§23-461(a)); less than the required rear yard (§23-47) and perimeter wall height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1668 East 28th Street, west side of East 28th Street 200' north of the intersection formed by East 28th Street and Quentin Road, Block 6790, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

130-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

153-13-BZ

APPLICANT – Eric Palatnik, PC, for Williamsburg Workshop, LLC, owner; Romi Ventures, LLC, lessee.

SUBJECT – Application May 10, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Soma Health Club*) contrary to §32-10. C4-3 zoning district.

PREMISES AFFECTED – 107 South 6th Street, between Berry Street and Bedford Avenue, Block 2456, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

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157-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.

SUBJECT – Application May 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1368 & 1374 East 23rd Street, west side of East 23rd Street, 180' north of Avenue N, Block 7658, Lot 78 & 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

212-13-BZ

APPLICANT – Eric Palatnik, P.C., for Andrey Novikov, owner.

SUBJECT – Application July 12, 2013 – 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) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 151 Coleridge Street, Coleridge Street between Oriental Boulevard and Hampton Avenue, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

213-13-BZ

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for adjourned hearing.

228-13-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

236-13-BZ

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and mezzanine floors of the existing building, and Special Permit (§73-52) to allow the fitness center use to extend 25'-0" into the R8 portion of the zoning lot. C6-2 & R8 zoning district.

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PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275’ east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

274-13-BZ

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

CORRECTION

This resolution adopted on January 14, 2014, under Calendar No. 360-65-BZ and printed in Volume 99, Bulletin Nos. 1-3, is hereby corrected to read as follows:

360-65-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Dalton Schools, Inc., owner.

SUBJECT – Application July 19, 2013 – Amendment of previously approved Variance (§72-21) and Special Permit (§73-64) which allowed the enlargement of a school (*Dalton School*). Amendment seeks to allow a two-story addition to the school building, contrary to floor area (§24-11) and height, base height and front setback (§24-522, §24-522)(b) regulations. R8B zoning district.

PREMISES AFFECTED – 108-114 East 89th Street, midblock between Park and Lexington Avenues, Block 1517, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance pursuant to ZR § 72-21 and special permit pursuant to ZR § 73-641 which authorized the enlargement of the Dalton School (“Dalton”) contrary to bulk regulations; and

WHEREAS, a public hearing was held on this application September 24, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on January 14, 2014; and

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

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

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, a representative of the Board of Directors of 1095 Park Avenue provided testimony that included neither support nor opposition to the application; the representative did note Dalton’s cooperation and ongoing efforts to mitigate the expansion’s impact on 1095 Park Avenue; and

WHEREAS, representatives from Carnegie Hill Neighbors, the Board of Managers of 111 East 88th Street, the Board of Directors of 1105 Park Avenue, and certain members of the surrounding community provided testimony in opposition to the application (the “Opposition”) citing the following concerns: (1) the effect of the expansion on neighboring properties with respect to natural light, ventilation, solar glare, shadows, noise, aesthetics, traffic during construction, and long-term property values; (2) the scale of the expansion in comparison to other mid-block, R8B

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buildings; (3) the fact that the site is already non-complying and has previously obtained bulk variances; (4) the absence of community outreach and Community Board support for the application; (5) the lack of an initial environmental assessment study (“EAS”) and the lack of time to review and respond to the EAS that was prepared; (6) the failure to address the (a), (c), and (e) findings of ZR § 72-21; (7) the misapplication of the Cornell doctrine for educational and religious institutions; (8) the precedent being set for other educational institutions within the mid-block contextual districts and citywide; and (9) the failure of Dalton to examine alternative sites and proposals; and

WHEREAS, the subject site is located mid-block on the south side of East 89th Street between Park Avenue and Lexington Avenue, in an R8B zoning district; and

WHEREAS, the site has 101.67 feet of frontage along East 89th Street and 10,235 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story building (“the Building”) used entirely for Dalton’s school purposes; and

WHEREAS, the Building, which was constructed in 1929 for Dalton, originally had ten stories with a small four-story portion at the rear; and

WHEREAS, in 1965, due to increased enrollment primarily from the inclusion of boys in the formerly all girls’ school, Dalton sought a variance and special permit, pursuant to the subject calendar number, to permit a single-story vertical extension of fenced-in areas on the roofs of the fourth story and tenth story; the enlargements constituted 10,720 sq. ft. of floor area, and increased the existing non-compliance related to FAR, front/rear setback, and sky exposure plane regulations under the then-R8 zoning; and

WHEREAS, the applicant states that the extension on the fourth-story roof was for an art studio, and the extension on the tenth-story roof created a double-height 11th story for a regulation-size gymnasium; and

WHEREAS, in the early 1990s, due to increased enrollment, Dalton sought additional classroom space; accordingly, on March 3, 1992, pursuant to the subject calendar number, Dalton obtained an amendment to the grant (the “Prior Amendment”) to allow the expansion within the Building’s envelope of the tenth-story library mezzanine and the insertion of a floor slab into the double-height gymnasium to convert the gymnasium into two new classroom floors (the 11th and 12th stories); the Prior Amendment allowed for 7,092 sq. ft. of additional floor area and required relief from FAR regulations under the current R8B zoning (also height and setback relief attributed to minor work on the cornice and roof); the construction permitted by the Prior Amendment was completed in 1995; and

WHEREAS, accordingly, the applicant states that in the nearly 85 years since the Building was constructed, its envelope has been expanded only once, in 1965, pursuant to the variance; and

WHEREAS, the Building exists now within its 1965 building envelope, with the floor area increase granted by the Prior Amendment for 86,796 sq. ft. (8.48 FAR), 12 floors, and a total height of 143’-10”;

WHEREAS, the applicant proposes to construct a two-story 12,164 sq. ft. enlargement above the 12th floor which

will result in 98,960.4 sq. ft. of floor area (9.67 FAR), 14 floors, and a total height of 170’-5”;

WHEREAS, the underlying R8B zoning district regulations allow for a maximum of 52,219 sq. ft. (5.1 FAR), a base height of 60 feet, and total height of 75 feet; and

WHEREAS, the applicant notes that Dalton occupies four buildings: 108-114 East 89th Street (the Building) occupied by the Upper School, comprising the Middle School (grades four through eight) and the High School (grades nine through twelve), totaling 929 students; 51-63 East 91st Street - The Lower School, comprising the First Program (kindergarten through third grade), totaling 376 students; 200 East 87th Street - The Physical Education Center; and 120 East 89th Street – offices; and

WHEREAS, the applicant represents that Dalton’s enrollment has increased by only 25 students since the Board approved the Prior Amendment, but the curriculum has evolved such that it is necessary for Dalton to provide additional classroom space in the Building; and

WHEREAS, the applicant represents that the programmatic need for the enlargement is to develop Dalton’s “STEM” program for science, technology, engineering and mathematics education, which is at the center of nationwide initiatives to transform education, from the primary grades through graduate school, by reemphasizing the science-based fields; and

WHEREAS, the applicant represents that Dalton is currently unable to offer the programming, particularly in technology and engineering to satisfy the goals of a competitive STEM curriculum; and

WHEREAS, specifically, for example, Dalton states that only 30 high school students are enrolled in the robotics course, which combines elements of engineering and computer science; and

WHEREAS, the applicant asserts that the modest enrollment is attributed to the lack of a specialized engineering space which would allow students to construct and test projects during the school day; instead, such work now must take place after school or on Saturdays, which deters students who are on a team sport or play an instrument and have practices and games or other activities scheduled after school; and

WHEREAS, the applicant states that the need to construct and test robots after school causes additional difficulties; the robots are tested on a 12-ft. by 12-ft. robotics movement “field” where they perform their designed tasks; the applicant notes that because this activity occurs after normal school hours in the computer science classroom, the first and last half hours of each after-school session is spent setting up and dismantling the movement field; and

WHEREAS, the applicant states that the Enlargement would allow for a permanent movement field and eliminate the wasted set-up and dismantling time; also, without a specialized engineering space, robots have to be stored on the floor in the computer science classroom which limits the size of the robots that can be constructed and curtails Dalton’s participation in FIRST, a not-for-profit

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organization devoted to helping young people discover and develop a passion for STEM; and

WHEREAS, as to computer science, the applicant states that a basic computer science class requires a room with computer stations and a space for group work on problems; Dalton currently has one such combined room for its entire computer science program, thus it is occupied by classes during every available period and is used for Lab meetings during the other periods, such as lunch periods – Lab periods are especially critical in computer science classes due to the need for incremental adjustments to projects that require meetings between student and teacher with access to the equipment; and

WHEREAS, Dalton represents that in 2005, 43 of its high school students took computer science; in 2012, 203 of the 455 high school students signed up to take the course, but only 184 were able to be enrolled in 2013 due to space limitations; for 2014, 254 students have signed up and they expect even more students to sign up in the future; and

WHEREAS, the applicant states that with the complete utilization of Dalton's one computer science classroom, no additional students can take computer science, nor can Dalton offer any computer science classes to middle school students, or provide new computer science classes in a greater variety of subareas; and

WHEREAS, the applicant represents that to meet the demand for additional computer science classroom space, the Enlargement would have computer science classrooms adjacent to both the High School and Middle School Facilities; and

WHEREAS, additionally, Dalton cites to deficiencies in its science program with insufficient space for students to participate in long-term in-house research projects that can be performed in the Building; in 2013 only 12 of the 48 students who signed up to perform long-term in-house research projects could be so placed; the other 36 students could not perform experiments and had to limit their work to theory; and

WHEREAS, the applicant states that the proposed Enlargement would contain two specialized robotics and engineering facilities, each of which takes up the space of approximately three regular classrooms, a long-term science research lab (approximately the size of two-to-three regular classrooms), and a greenhouse (approximately the size of three regular classrooms) (collectively, the "New Facilities"), which Dalton needs in order to correct the deficiencies in its STEM program; and

WHEREAS, the applicant submitted a matrix that shows the occupancy of each regular classroom, for each period, in each day of a typical school week during the most recent school year to support its point that the Building's existing classrooms are fully utilized and there is no classroom space in the Building for new courses or additional sections of existing courses; thus, the Building's classroom space cannot be converted into the New Facilities; and

WHEREAS, the matrix reflects that regular classrooms are occupied during 74.88 percent of the periods in a school week, but notes that in the periods in which these classrooms are not being used for a class, students who would otherwise use these rooms are at lunch, gym or assembly, so that when

accounting for these periods, the adjusted weekly-utilization rate for regular classrooms is 89.83 percent; and

WHEREAS, the applicant represents that during the approximately 10 percent of periods when the rooms could be used by classes, they are usually occupied by teachers and students engaged in Lab meetings, either because access to materials in the classroom is needed, or because there is insufficient faculty office space for these meetings to occur elsewhere; and

WHEREAS, the applicant represents that the nearly 90 percent adjusted-utilization rate of Dalton's regular classrooms is very high and it would be difficult to increase the rate because it would be very hard to match the scattered room availability with both student and teacher availability; and

WHEREAS, the applicant also states that there is not any other non-classroom space that can be converted for the STEM use and there is not any space in Dalton's other buildings available for the STEM use; and

WHEREAS, the applicant notes the following specific use of the Enlargement: two stories with approximately 12,164 sq. ft. of floor area; the 13th floor, containing approximately 6,100 sq. ft. of floor area, would have an approximately 480 sq. ft. machine room (the "Machine Room"), an approximately 1,200 sq. ft. high school robotics/engineering laboratory (the "High School Engineering Lab," and together with the Machine Room, collectively, the "High School Facility"), an approximately 420 sq. ft. high school computer science classroom, an approximately 950 sq. ft. middle school robotics/engineering lab (the "Middle School Facility") and an approximately 500 sq. ft. middle school computer science classroom; the 14th floor, also approximately 6,100 sq. ft., would contain an approximately 1,300 sq. ft. greenhouse, an approximately 1,200 sq. ft. science research lab, and three classrooms, each approximately 460 sq. ft.; and

WHEREAS, the applicant states that the High School Facility would include fabrication laboratory equipment (the "Fab Lab"), prototyping (assembly) space, a robotics area, engineering equipment, and a machine room; and

WHEREAS, the applicant states that the High School Facility will allow Dalton to meet the following primary goals: allow 85 to 110 high school students to take robotics if both the lecture and construction components of the course were provided during the school day, rather than after school and on weekends; allow students to enter competitions with the space to construct larger projects such as solar cars and gravity vehicles; to offer a variety of engineering electives, such as biological and electrical engineering, which require such a facility to construct and test projects; to offer, as an accredited course, participation in the Science Olympiad, a citywide competition combining engineering and science; and to integrate art into its STEM program by offering new courses such as Computer Science and Art (Graphics) which need to utilize the specialized Fab Lab equipment; and

WHEREAS, additionally, the new facility will allow middle school students access to robotics and engineering classes, including the Fab Lab; sufficient space to undertake long-term research projects; new science electives such as Quantum Mechanics, Advanced Environmental Science,

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Evolutionary Ecology, Astronomy II, Electronics, and Marine Biology that require lab projects; and

WHEREAS, finally, the Enlargement will include a greenhouse to be used for (1) Dalton's Environmental Science class for food and agricultural studies and experiments with nutrient recycling and energy conservation, (2) biology classes, for studies on plant function and growth, (3) other classes that have units on plants or sunlight, and (4) Middle School and High School environmental clubs; and

WHEREAS, the applicant represents that the proposal will further Dalton's programmatic needs without affecting any of the findings of the original variance grant; and

WHEREAS, the applicant further represents that the proposed facility is unable to be accommodated within Dalton's other buildings: specifically (1) in 200 East 87th street where Dalton leases the lowest five floors, an enlargement is infeasible as the floors above are occupied by co-op apartments; (2) in 120 East 89th street where Dalton leases office space, the lease expires in 2020, and any additional space would be in doubt at the time the lease expires; and (3) expansion space off-site would not meet the programmatic needs because travelling to off-site location diminishes class time; and

WHEREAS, , the applicant states that the New York State Court of Appeals has held that in a residential district educational institutions cannot be required to show an affirmative need to expand as a condition precedent to the issuance of a discretionary approval by a zoning board. *See, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986); *Lawrence School Corp. v. Lewis*, 578 N.Y.S.2d 627 (N.Y.A.D. 2 Dept., 1992); and

WHEREAS, the applicant adds that the Cornell court also held that because "schools, public, parochial, and private, by their very nature, singularly serve the public's welfare and morals," zoning boards in New York should allow schools to expand into residential areas unless a particular proposed expansion "would unarguably be contrary to the public's health, safety or welfare." *Id.* at 593, 595; and

WHEREAS, the applicant asserts that Cornell crystallized the Court of Appeals' long-standing presumption in favor of educational and religious uses in residential areas. *See Diocese of Rochester v. Planning Bd. of Town of Brighton*, 1 N.Y.2d 508, 526 (1956) ("schools and accessory uses are, in themselves, clearly in furtherance of the public morals and general welfare"); and

WHEREAS, further, the applicant asserts that under the State's standard, the court has held that, for example, the potential adverse impacts on "use, enjoyment and value of properties in the surrounding areas" and on "the prevailing character of the neighborhood" are "insufficient bas[e]s on which to preclude" the substantial expansion of a religious facility in a residential neighborhood. *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488, 494 (1968); and

WHEREAS, the applicant asserts that the proposed variance would allow Dalton to add 12,164 sq. ft. of instructional and research space in two additional floors at the top of the Building; the Enlargement will not lead to an increase in enrollment, nor will it result in additional traffic in the area; the principal affect will be on the eastern views

of apartments on the top floors of 1095 Park Avenue, the building to the immediate west; and

WHEREAS, the applicant states that the Building's configuration constitutes a unique physical condition on the zoning lot, which causes Dalton practical difficulties and unnecessary hardship that prevent Dalton from being able to carry out its proposed program in the Building, particularly in the STEM areas; and

WHEREAS, the applicant notes that construction of the Enlargement would increase the Building's non-compliance with, and requires relief from, the applicable maximum base height, maximum building height, front setback, rear setback, and FAR requirements of the Zoning Resolution, but that strict application of the Zoning Resolution would serve no public purpose and would operate as a severe constraint on Dalton's functioning as an academic institution; and

WHEREAS, the applicant asserts that its hardship is not one that is generally applicable to uses located in the neighborhood in which the zoning lot is located, which is predominately residential in nature; and

WHEREAS, specifically, the applicant notes that there is only one other school within 400 feet of the site, PS M169 (Robert F. Kennedy School), directly south of the site, at 110 East 88th Street, which occupies the lower floors of a 38-story residential tower; and

WHEREAS, the applicant asserts that the proposed Enlargement would not be contrary to the public's health, safety or welfare and that it would not alter the essential visual character of the neighborhood; and

WHEREAS, the applicant asserts that because the Enlargement is designed to serve the existing school enrollment, there will be no resulting increase in the use of the Building, and thus no increase in pedestrian or vehicular traffic in the area; and

WHEREAS, as to bulk, the applicant notes that increasing the stories in the Building from 12 to 14 would raise its height by 26'-7" to 170'-5"; and

WHEREAS, the applicant submitted an area map and a table which identify other buildings with comparable heights within a 400-ft. radius of the site; and

WHEREAS, the analysis reflects that of the 152 buildings shown, from 85th Street to 91st Street between Lexington and Madison avenues, there are 45 buildings with more than 13 stories, including two on the Building's block-the property immediately to the west of the Building, 1095 Park Avenue, which has 18 stories and extends approximately 50 feet into the R8B district, and the building on the southeast corner of the Building's block, 1085 Park Avenue, which is 15 stories; there are also five buildings with more than ten stories, and nine with more than seven stories; and

WHEREAS, the applicant asserts that the development of adjacent property will not be substantially impaired should the amendment be granted because the principal impact of the Enlargement will be on the eastern views from and light and air to the windows on the upper stories of 1095 Park Avenue, the building immediately to the west; and

WHEREAS, the applicant notes that 1095 Park Avenue is an 18-story building, with its zoning lot having 159 feet of frontage on East 89th Street, the western 100 feet

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are in an R10 district, and the remaining 59 feet, including the portion in which the affected windows are located, are in the same R8B district as the Building; and

WHEREAS, the applicant notes that the Enlargement and the elevator bulkhead would be between 9'-0" and 14'-10" from the affected windows in 1095 Park Avenue and the acoustic screen on the roof of the Enlargement would be approximately 25 feet away from the affected windows; and

WHEREAS, the applicant notes that the Enlargement, the elevator bulkhead, and the presence of the screen would adversely affect the views from and light and air to windows on the 15th through 18th floors, and would obstruct the light and air to some windows on the 14th floor of 1095 Park Avenue; and

WHEREAS, however, the applicant asserts that under the relevant legal standards the obstruction of the views from and light and air to the affected windows should not be considered contrary to the public's health, safety or welfare; and

WHEREAS, the applicant notes that the Enlargement will also be visible from 13 other comparably-sized buildings; and

WHEREAS, the applicant notes that the Enlargement will be fully enclosed and no student access will be permitted on the roof; therefore, there will be no affect with respect to noise from the Enlargement on adjacent properties; and

WHEREAS, the applicant asserts that the Enlargement will contain aspects that will contribute positively to the neighborhood, aesthetically and environmentally including an attractive brick façade to replace the current stucco-facing of the 11th and 12th floors, to match the façade of the Enlargement and the rest of the Building; and

WHEREAS, at the Board's request, the applicant identified all of its mitigation measures for sound and other potential impacts to surrounding buildings; such measures include: (1) replacement of stucco with brick on the existing top two stories, (2) the ductwork on the south-facing existing wall of the Building will remain, but the extension of the ductwork for the two new stories will be brought into the Building, (3) installation of more efficient mechanical equipment and acoustic screens for noise reduction, (4) elimination of west-facing windows on the enlargement in response to 1095 Park Avenue's concerns, (5) lighting controls within the building to turn off lights when unoccupied and use of the greenhouse grow lights only during daylight hours, (6) elimination of the western stair bulkhead and water tower and reduction in height of the elevator bulkhead from 15 feet to 13 feet, (7) prohibition of the use of the roof by children, and (8) the provision of green roof and plantings on vertical surfaces visible from 1095 Park Avenue; and

WHEREAS, the applicant states that in granting the Prior Amendment, the Board made the required findings under ZR §§ 72-21, 73-03, 73-64 and 73-641 of the Zoning Resolution and that the proposed amendment does not disturb any of the prior findings; and

WHEREAS, the Opposition asserts that the application should have been filed as a new variance application instead of as an amendment on the Special Order Calendar, and it cites Westwater v. New York City Bd. of Stds. and Appeals,

2013 N.Y.Misc Lexis 4707 (1st Dept 2013) and Fisher v. New York City Bd. of Stds. and Appeals, 71 AD2d 126, 127 (1st Dept 2002) for the principle that only site changes that would be permitted as-of-right but for the prior variance—"minor" or "ministerial" changes—are properly reviewed as amendments to a variance; all other changes, the Opposition states, must be reviewed as new variance applications; as such, the Opposition states that the proposal, which would not be permitted as-of-right, was improperly filed as an amendment; and

WHEREAS, additionally, the Opposition asserts that the EAS is deficient in the following respects: (1) it fails to acknowledge that the expansion results in a building that is more similar to the adjacent R10 district than to Dalton's mid-block R8B district; (2) the shadow study addressed the incremental impact of the expansion rather than the impact of the Building as a whole; (3) the urban design analysis erroneously compared Dalton to Park Avenue buildings rather than buildings within the mid-block R8B; (4) the air quality study did not include the effects of the expansion on buildings other than 1095 Park Avenue; (5) the construction impacts discussion ignores the fact that work will have to be performed outside of school hours; (6) the EAS does not address that this is the third variance application filed at the site; and (7) the Opposition also takes exception with the timing of the submission of the EAS, and states that it is contrary to SEQRA's goal of incorporating environmental considerations into the decision making process at the earliest opportunity; and

WHEREAS, finally, the Opposition asserts that the application ignores the requirements of ZR § 72-21(a), (c), and (e) in that: (1) the application does not articulate a unique physical condition inherent on the zoning lot that creates a practical difficulty in developing in accordance with the zoning regulations; (2) the application does not demonstrate how the expansion outweighs the detrimental impact on the general welfare of the surrounding community; and (3) the application includes no alternative development proposals and provides no details of the use of the building that would enable to Board to make a finding that the proposal is the minimum variance necessary; and

WHEREAS, the applicant responded to the following primary concerns raised by the Opposition (1) the assertions about the requirement for, substance of, and procedure of the EAS; (2) the incompatibility of the Enlargement with the character of the neighborhood; (3) the scope of the Enlargement and its nature as a third approval for the Building; and (4) the limitations of the case law deference afforded to educational institutions; and

WHEREAS, as to the Opposition's concerns about the form of the application and the requirement for an EAS, the applicant notes that such claims are rendered moot by its submission of an EAS; and

WHEREAS, specifically, the applicant notes that it submitted an EAS in a manner which afforded the Opposition and the Community Board in excess of 70 days to review and respond; and

WHEREAS, the applicant asserts that the Community Board has been afforded more time to review the EAS than if it had been submitted with the initial application because if the EAS had been submitted along with the initial

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application, it is unlikely that the Community Board would have had the opportunity to review critiques of the EAS as provided by the Opposition's consultants and likely that it would not have had more than 60 days to review; and

WHEREAS, the applicant notes that the Opposition reviewed and submitted a lengthy response to the EAS for the Board's consideration; and

WHEREAS, as to the Opposition's concerns related to alleged deficiencies in the EAS, the applicant asserts that they are without merit and that the EAS was conducted in full accordance with the methodologies set forth in the City's CEQR Technical Manual; and

WHEREAS, the applicant notes that it submitted the EAS to the Community Board more than 60 days prior to the Board's scheduled decision date, which is consistent with the 60-day period that the Community Board has to review new applications prior to the Board's first hearing; and

WHEREAS, as to the Opposition's concerns about the EAS being submitted after the application had already been initially reviewed, the applicant notes that those concerns were raised prior to the revision of the submission schedule which allowed the Community Board and the Opposition more than 60 days to review and comment on the EAS; and

WHEREAS, as to the Opposition's concerns about the Land Use, Public Policy and Zoning Section of the EAS, the applicant notes that the Opposition's consultant concedes that the EAS "examines direct impacts" of the variance, but contends that it "ignores the possibility of indirect impacts" such as the potential that a variance granted for this project may lead to similar variances for other facilities in the R8B district; and

WHEREAS, the applicant notes that the CEQR Technical Manual requires a study of indirect impacts of an action only when a site-specific change "is important enough to lead to changes in land use patterns over a wider area" but does not require a study of indirect impacts that are speculative; and

WHEREAS, the applicant notes that as to the Opposition's concerns about the character of the R8B zoning in the mid-block, 11 other buildings in the midblocks between Park and Lexington avenues and East 87th Street and the north side of East 90th Street exceed the 75-ft. height limit of the R8B zoning district, with seven of them having heights of 150 feet or greater; and

WHEREAS, accordingly, the applicant asserts that the proposed Enlargement, which would increase the height of the Building from 143'-10" to 170'-5", would not be out of context with the midblocks in its vicinity; and

WHEREAS, in response to the Opposition's concerns regarding outreach, and questions raised by the Board, the applicant described its prior outreach to the community, including the neighbors at 1095 Park Avenue and performed additional outreach including displaying a model of the Building to 1105 Park Avenue; and

WHEREAS, as to the specific impact alleged by 1105 Park Avenue that the Enlargement would have a significant adverse effect on views from 1105 Park Avenue's south and east facing windows and would cast shadows on its façade, the applicant asserts that the Enlargement would only be visible from these windows at oblique angles at distances

ranging from 80 to 160 feet (based on distances shown on the Sanborn Map); and

WHEREAS, as to the Opposition's claims that the applicant failed to provide an analysis of alternative sites, the applicant states that, following Cornell, such a discussion would be inappropriate; the court stated that "[a] requirement of a showing of need to expand, or even more stringently, a need to expand to the particular location chosen, however, has no bearing whatsoever upon the public's health, safety, welfare or morals. The imposition of such a requirement, or any other requirement unrelated to the public's health, safety or welfare, is, therefore, beyond the scope of the municipality's police power, and thus, impermissible" Cornell at 597 (citations omitted); and

WHEREAS, first, as to procedure, the Board notes that (1) New York State courts have recognized the Board's authority to establish which hearing calendar and application type is appropriate for proposals under its consideration; (2) the content of the application and the Board's analysis, rather than the calendar designation, guide the Board's review; (3) although the application was filed on the Special Order Calendar, the applicant satisfied the requirements of a variance application including specifically notification of neighbors and the submission of an EAS; and (4) the Board reviewed the application with the same degree of rigor it would had it been a new variance application; and

WHEREAS, the Board agrees with the applicant that the Opposition's case law cited in support of the timing concern is not persuasive as one case holds that environmental review must occur prior to the action by the governmental body, which is consistent with the Board's review here prior to acting on the subject application See City Council of City of Watervilet v. Town Board of Colonie, 3 N.Y. 3d 508 (2004); and

WHEREAS, as to the Opposition's assertion that the EAS should have examined the cumulative impacts of the subject application along with Dalton's two prior grants, which were granted 22 and 49 years ago, respectively, the Board agrees with the applicant that there is not any support for this contention in the CEQR Technical Manual or in Save the Pine Bush v. Albany, 70 N.Y. 2d 193, 206 (1987), which pertains to ten proposed projects in a recently rezoned area, and not to the cumulative impact of three actions to a single property over 49 years; and

WHEREAS, the Board notes that its Rules of Practice and Procedure do not require that an EAS be submitted for applications on the Special Order Calendar, but that the applicant volunteered to prepare an EAS to respond to concerns the Opposition raised and that it followed the requirements of the CEQR Technical Manual; and

WHEREAS, the Board notes that the applicant submitted the EAS to the Opposition and the Community Board more than 70 days in advance of the Board's decision, which is more time than the Community Board has in a standard application process; and

WHEREAS, the Board has considered the relevant findings and concludes that the proposal does not disturb any of the findings of the original variance or special permit; and

WHEREAS, the Board accepts the programmatic needs as legitimate and finds that the applicant has

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sufficiently described the specific needs for the proposed new floors and articulated a clear need for all of the proposed floor area; and

WHEREAS, the Board accepts the applicant's representations that the proposed space is necessary to accommodate the STEM programming, allow more students to participate in the programming, and to relieve the nearly 90 percent utility of the existing classrooms which constrains school-wide scheduling; and

WHEREAS, the Board notes that the streetwall, height and setback waivers are necessary so that the Building may follow the institutional model of uniform floor plates to promote efficiencies and have floor to floor heights that are appropriate for classroom and laboratory use and can accommodate building services; and

WHEREAS, the Board also agrees with the applicant that Cornell does not allow for a zoning board to require an educational institution to analyze alternate sites and finds that the applicant has sufficiently satisfied its minimum requirements to accommodate its programmatic needs; and

WHEREAS, as to the compatibility of the proposed use and bulk, the Board notes that the applicant does not propose to increase enrollment and, thus, the current use will be maintained; and

WHEREAS, the Board finds that the amendments including the additional 12,164 sq. ft. and the additional two stories and 27 feet in height will still allow the subject building to meet the (c) finding; and

WHEREAS, the Board notes that the original ten-story building did not comply with the floor area or sky exposure plane at the sixth floor when the R8 zoning district regulations were imposed in 1961; and

WHEREAS, accordingly, as of 1961, before any Board action, there was not any as-of-right enlargement available to the pre-existing non-complying Building, which was originally constructed to a height in excess of 119'-3" and 6.5 FAR; and

WHEREAS, since its construction in 1929, the building also has never had a height of FAR that would comply with the 75-ft. of 5.1 community facility FAR R8B regulations which has been in effect since the 1985 rezoning of the mid-block; and

WHEREAS, the Board does not find that it is appropriate to measure any enlargement to the Building against the R8B building envelope since the current non-complying building envelope has existed since 1965; thus, the true incremental increase is from the existing 1965 building envelope with height of 143'-10" (the envelope was built to accommodate 7.7 FAR, which was increased to the existing 8.48 FAR); and

WHEREAS, the Board notes that if the Building's existing non-complying conditions established in 1965 are used as a base line, rather than the R8B envelope, the height increment is 27 feet versus 95 feet and thus a much more reasonable change than the Opposition suggests; and

WHEREAS, the Board notes that 1095 Park Avenue, which is adjacent to the school building, extends approximately 50 feet into the subject R8B midblock and has an even greater degree of non-compliance with a height of 192 feet; and

WHEREAS, as a result, on the south side of the

midblock where the subject site is located, the adjacent 1095 Park Avenue and the Building create a built condition with an existing non-compliance to FAR and height that extends 150 feet into the 200-ft. length of the East 89th Street midblock; and

WHEREAS, the Board further notes that the surrounding midblocks, particularly to the south (between East 85th and 88th streets between Lexington and Park avenues) and to the west (between East 88th and East 89th streets between Park and Madison avenues) are zoned for 10.0 FAR (R10 equivalent) and allow building heights of 185 feet under the contextual envelope; and

WHEREAS, the Board finds that because of the existing and surrounding context, which is more similar to an R10 equivalent context than R8B, the proposed total 9.67 FAR and 170-ft. height are appropriate; and

WHEREAS, as to the Opposition's concerns that the Enlargement will have a negative impact on surrounding buildings, the Board notes that the direct impact is on 1095 Park Avenue and that Dalton has worked with its neighbor to resolve concerns and to provide mitigation measures to lessen impact, to the extent that its Board of Directors did not oppose the project; and

WHEREAS, the Board notes that the affected windows at 1095 Park Avenue are themselves above the maximum building height of 75 feet in the R8B district as 1095 Park Avenue has 18 stories and, further that, 1105 Park Avenue has 15 stories with an oblique view of the Enlargement; and

WHEREAS, the Board agrees with the applicant that under the relevant legal standards, the obstruction of the views from the 1095 Park Avenue windows is not a sufficient justification for denying the subject application; and

WHEREAS, as to the question of whether the proposal represents the minimum variance, the Board reiterates that the applicant has established that the request for the Enlargement is required by Dalton's legitimate programmatic needs; and

WHEREAS, the Board while recognizing the legitimate concerns raised by the Opposition regarding the degree of waivers requested for the proposed action, does not believe that the approval of such action will set a precedent for future variance applications in the midblock; and

WHEREAS, specifically, the Board reviews each case based on its unique factors and context in determining the appropriateness of floor area and height and setback waivers as well as the neighborhood character finding; and

WHEREAS, the Board finds that the proposed Enlargement, given certain unique factors and context cited above, would not change the essential character of the neighborhood; and

WHEREAS, the Board notes that the applicant represents that Dalton does not have plans to enlarge the Building again in the future, and the Board is concerned that any future enlargement may exceed an appropriate building height and floor area for the neighborhood and may disturb the variance findings; and

WHEREAS, the Board notes that the applicant states that Dalton does not plan to increase its enrollment; thus, the Board finds that the Building with the proposed Enlargement will relieve the high demand for classroom space and allow flexibility in the future to accommodate new programmatic

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needs as they arise such that additional enlargements would not be warranted; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated June 8, 1965, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received October 9, 2013' - (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged Building: a maximum of 14 stories, a height of 170'-5", and 98,960 sq. ft. of floor area (9.67 FAR), as reflected on the BSA-approved plans;

THAT all proposed mitigation measures, including (1) replacement of stucco with brick on the existing top two stories, (2) installation of the ductwork extension for the Enlargement within the Building, (3) installation of more efficient mechanical equipment and acoustic screens for noise reduction, (4) elimination of west-facing windows on the enlargement, (5) installation of lighting controls within the building to turn off lights when unoccupied and use of the greenhouse grow lights only during daylight hours, (6) elimination of the western stair bulkhead and water tower and reduction in height of the elevator bulkhead from 15 feet to 13 feet, (7) prohibition of the use of the roof by children, and (8) the provision of green roof and plantings on vertical surfaces visible from 1095 Park Avenue will be installed and maintained in accordance with the BSA-approved plans;

THAT any change in the use or operator of the Building is subject to Board approval;

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

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

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

Adopted by the Board of Standards and Appeals, January 14, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 4-5, Vo. 99, dated February 5, 2014.

BULLETIN

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DOCKETS

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18-14-BZ

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22-14-BZ

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

CALENDAR

FEBRUARY 25, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 25, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

11-93-BZ

APPLICANT – Sheldon Lobel, P.C. for Joy Kiss Management, LLC, owner; Chen Qiao Huang (Good fortune Restaurant), lessee.

SUBJECT – Application December 18, 2013 – This application seeks to extend the time to obtain a Certificate of occupancy for the existing building at the premises since a C/O was not obtained within the one year time period required by the boards resolution dated March 20, 2012. A waiver of the Boards Rules is also required to permit the filing of this application more than (30) days after the expiration of the time to obtain a Certificate of Occupancy. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

287-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Related Broadway Development LLC, owner; TSI West 94, LLC dba New York Sports club, lessee.

SUBJECT – Application November 20, 2013 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment/health club (PCE) at the subject premises which expired on April 16, 2011; Waiver of the Rules. C4-6/R8 zoning district.

PREMISES AFFECTED – 2523-2525 Broadway, west side of Broadway between West 93rd Street and West 94th Street, Block 1242, Lot 10, 55, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

307-13-A & 308-13-A

APPLICANT – Joseph M. Morace, R.A., for Jake Rock, LLC, owner.

SUBJECT – Application November 21, 2013 – Proposed construction of a detached two family residence fronting upon a street that is not legally mapped, which is contrary to Section 36 Article 3 of the General City Law. R3A zoning

district.

PREMISES AFFECTED – 96 & 100 Bell Street, Block 2989, Lot 24 & 26, Borough of Staten Island.

COMMUNITY BOARD #1SI

ZONING CALENDAR

160-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yitzchok and Hindy Blumenkrantz, owners.

SUBJECT – Application May 28, 2013 – Special Permit (§73-622) for the enlargement of an existing single home contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1171-1175 East 28th Street, east side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #14BK

177-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Ratsenberg, owner.

SUBJECT – Application June 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, to be converted to a two-family home, contrary to floor area, lot coverage and open space (§ZR 23-141) and less than the required rear yard (§ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 134 Langham Street, west side of Langham Street between Shore Boulevard and Oriental Boulevard, Block 8754, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

216-13-BZ & 217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant and construct a new two story eating and drinking establish with accessory parking for twenty-five cars, located in the bed of the mapped street, (*Boardwalk Avenue*) contrary to General City law Section 35. R3-X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

268-13-BZ

APPLICANT – Belkin Burden Wenig & Goldman, LLP, for Rachel H.Opland, Adrienne & Maurice Hayon, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-621) to permit the increase in lot coverage from 55.28% to 58% to an existing 3-story building contrary to §23-141 zoning resolution. R5 zoning district.

PREMISES AFFECTED – 2849 Cropsey Avenue, north east side of Cropsey Avenue, approximately 25.9 feet northwest from the corner formed by the intersection of Bay 50th St. and Cropsey Avenue, Block 6917, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #13BK

282-13-BZ

APPLICANT – Flora Edwards, Esq., for Red Hook Property Group, LLC, owner; High Mark Independent, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-19) to permit construction of a school (*The Basis Independent Schools*). M1-1 zoning district.

PREMISES AFFECTED – 556 Columbia Street aka 300 Bay Street, west side of Columbia Street between Bay Street and Sigourney Street, Block 601, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

293-13-BZ

APPLICANT – Slater & Beckerman, P.C., for JSB Reality No 2 LLC, owner; Fitness International, LLC aka LA Fitness, lessee.

SUBJECT – Application October 23, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*LA Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 78-04 Conduit Avenue, west side of South Conduit Avenue between Linden Boulevard, and Sapphire Avenue, Block 11358, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 4, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

42-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1221 Avenue holdings LLC, owner; TSI West 48, LLC dba New York Sports Club, lessee.

SUBJECT – Application October 2, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on July 22, 2013; Amendment to the hours of operation; Waiver of the Rules. C6-5, C6-6 (MID) zoning district.

PREMISES AFFECTED – 1221 Avenue of the Americas, western block front of the Avenue of Americas between West 48th Street and West 49th Street, Block 1001, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an amendment, and an extension of term for a physical culture establishment (“PCE”), which expired on July 22, 2003; and

WHEREAS, a public hearing was held on this application on January 14, 2014, after due notice by publication in *The City Record*, and then to decision on February 4, 2014; and

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

WHEREAS, Community Board 5, Manhattan, declines to issue a recommendation on the application; and

WHEREAS, the subject site is a corner lot with frontages along West 48th Street and West 49th Street, and Avenue of the Americas, partially within a C6-6 zoning district and partially within a C6-5.5 zoning district, within the Special Midtown District; and

WHEREAS, the site is occupied by a 51-story commercial building, known as the McGraw Hill Building, with approximately 2,508,386 sq. ft. of floor area; and

WHEREAS, the PCE is located on portions of the cellar, sub-cellar, and third sub-cellar levels (20,344 sq. ft. of floor space), with an entrance through the plaza on the Avenue of the Americas frontage of the site; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, on July 22, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, on a site partially within a C6-6 zoning district and partially within a C6-5.5 zoning district, within the Special Midtown District, the operation of a PCE for a term of ten years, to expire on July 22, 2013; and

WHEREAS, the applicant now seeks an amendment regarding the hours of operation and an extension of the term of the PCE special permit for ten years; and

WHEREAS, as to the hours of operation, the applicant noted that the operator has changed the hours of operation from Monday through Thursday, from 6:00 a.m. to 11:00, Friday, from 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, from 9:00 a.m. to 7:00 p.m. to Monday through Thursday, from 5:30 a.m. to 9:00 p.m., Friday, from 5:30 a.m. to 8:00 p.m. and closed Saturday and Sunday; and

WHEREAS, in addition, the applicant requests that the hours of operation be removed as a condition of the grant, so that the operator has flexibility to respond to the changing needs of its members; the applicant notes that the PCE is within an entirely commercial building and that the building is within a commercial district with no nearby residential uses; and

WHEREAS, the Board agrees that because the building contains only commercial uses and because the site is not adjacent to any residential uses, the hours of operation need not be included as a condition of the grant; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 22, 2003, so that as amended the resolution reads: “to grant an amendment to remove the condition regarding the PCE’s hours of operation and to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that the use will substantially comply with the drawings associated with the prior approval; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on July 22, 2023;

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

MINUTES

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

381-04-BZ

APPLICANT – Sheldon Lobel, P.C., for 83 Bushwick Place, LLC, owner.

SUBJECT – Application December 6, 2013 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a four-story residential building with parking which expired on September 12, 2010; Waiver of the Rules. M1-1 zoning district.

Community Board #1BK

PREMISES AFFECTED – 83 Bushwick Place aka 225-227 Boerum Street, northeast corner of the intersection of Bushwick Place and Boerum Street, Block 3073, Lot 97, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for a four-story residential building; and

WHEREAS, a public hearing was held on this application on January 14, 2014, after due notice by publication in *The City Record*, and then to decision on February 4, 2014; and

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

WHEREAS, the subject site is located on the northeast corner of Bushwick Place and Boerum Street, within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 12, 2006, when, under the subject calendar number, the Board granted a variance to permit the construction of a four-story residential building contrary to use regulations; and

WHEREAS, pursuant to ZR § 72-23, construction was to be substantially completed by September 12, 2010; and

WHEREAS, the applicant represents that, due to severe economic hardship, construction pursuant to the variance has not commenced; and

WHEREAS, accordingly, the applicant now seeks an extension of time (four years) to substantially complete construction; and

WHEREAS, at hearing, the Board directed the applicant to remove the graffiti from the site; and

WHEREAS, in response, the applicant agreed to have the graffiti removed; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated September 12, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction to February 4, 2018; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction be completed by February 4, 2018;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 301866032)

Adopted by the Board of Standards and Appeals, February 4, 2014.

297-06-BZ

APPLICANT – Eric Palatnik, for Montgomery Avenue Properties, LLC, owner.

SUBJECT – Application November 15, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a four-story residential building with ground and cellar level retail, which expired on October 16, 2011; Waiver of the Rules. C4-2 (HS) zoning district.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a four-story mixed commercial and residential building; and

WHEREAS, a public hearing was held on this application on January 14, 2014, after due notice by publication in *The City Record*, and then to decision on February 4, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located on the west side of Montgomery Avenue, between Fort Place and Victory Boulevard, within a C4-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 16, 2007, when, under the subject calendar number, the Board granted a variance to permit the construction of a four-story mixed commercial and residential building contrary to ZR §§ 23-47 (rear yard) and 23-145 (lot coverage); and

WHEREAS, the applicant notes that a waiver of General City Law §35 was granted in a companion application under BSA Cal. No. 298-06-A; and

WHEREAS, pursuant to ZR §72-23, construction was to be substantially completed by October 16, 2011; and

WHEREAS, the applicant represents that, due to protracted litigation, financing of the project was delayed and construction has not yet commenced; and

WHEREAS, accordingly, the applicant now seeks an extension of time (four years) to substantially complete construction; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 16, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to February 4, 2018; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy will be obtained by February 4, 2018;

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

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

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

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its

jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 500855452)

Adopted by the Board of Standards and Appeals, February 4, 2014.

25-08-BZ

APPLICANT – Eric Palatnik, P.C., for Torah Academy for Girls, owner.

SUBJECT – Application February 14, 2013 – Amendment to a Variance (§72-21) which permitted bulk waivers for the construction of a school (*Torah Academy for Girls*). The proposed amendment seeks to enlarge the school to provide additional classrooms. R4-1 zoning district.

PREMISES AFFECTED – 444 Beach 6th Street, Beach Street and Meehan Avenue, Block 15591, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in an R4-1 zoning district the enlargement of a three-story school building contrary to bulk regulations; and

WHEREAS, the application is brought on behalf of Torah Academy for Girls (the “Yeshiva”), a nonprofit religious educational institution; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with a continued hearing on January 14, 2014, and then to decision on February 4, 2014; and

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

WHEREAS, the subject site comprises the western half of Block 15591, which is bounded by Meehan Avenue, Beach 6th Street, and Jarvis Avenue, within an R4-1 zoning district; and

WHEREAS, the site has approximately 239 feet of frontage on Meehan Avenue, 190 feet of frontage on Beach 6th Street, and approximately 289 feet of frontage on Jarvis Avenue, and approximately 50,003 sq. ft. of lot area; and; and

WHEREAS, the site is occupied by a one- to four-story school building (Use Group 3) with 84,389 sq. ft. of floor area (1.69 FAR); and

WHEREAS, on May 20, 2008, under the subject calendar number, the Board granted a variance to allow the enlargement of the building contrary to the requirements for

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lot coverage (ZR §§ 24-11 and 24-12), front yard (ZR § 24-34), rear yard (ZR § 24-382), perimeter wall height, setback, and sky-exposure plane (ZR § 24-521); and

WHEREAS, the applicant notes that prior to the 2008 grant, the Board, under BSA Cal. No. 158-02-BZ, permitted the enlargement of the building contrary to the requirements for floor area, side yards, front yard, rear yard, and height and setback; a floor area waiver was necessary because, at the time, the site was zoned R3-1, which has a maximum permitted community facility FAR of 1.0; and

WHEREAS, the applicant now requests an amendment to vertically and horizontally enlarge the building, resulting in an increase of the degree of waiver granted with respect to lot coverage and setbacks; and

WHEREAS, as to lot coverage, the applicant states that it will increase from 63.25 percent to 66.07 percent (the maximum permitted lot coverage is 58.06 percent); and

WHEREAS, as to setbacks, the applicant states that one of the three setbacks provided will be decreased from a depth of 23'-9" to a depth of 20'-11 9/16" and the other two setbacks provided will remain at depths of 15'-0" and 1'-8" (three setbacks with depths of 15'-0" are required); and

WHEREAS, in addition, the applicant states that the enlargement will result in an increase in floor area from 84,389 sq. ft. (1.69 FAR) to 98,388 sq. ft. (1.97 FAR); however, the applicant notes that the proposed FAR is within the 2.0 FAR permitted as-of-right in the R4-1 district; and

WHEREAS, the applicant states that the proposed enlargement will result in the following: (1) an additional classroom on the first story; (2) one fewer classroom on the second story; (3) five fewer regular classrooms but three additional remedial classrooms and a new library on the third story; (4) eight additional classrooms, a computer lab and a multipurpose room on the fourth story; and (5) a rooftop recreation area; and

WHEREAS, the applicant states that the Yeshiva requires the enlargement in order to satisfy its programmatic needs, which include providing sufficient space for its growing student body, which requires 35 sq. ft. of classroom space per student; and

WHEREAS, specifically, the applicant represents that while enrollment at the Yeshiva is nearly 1,100 students, its existing facilities are capable of accommodating no more than 922 students; and

WHEREAS, the applicant represents that the enlargement will bring the Yeshiva to a classroom space-per-student of 33.3 sq. ft., which is acceptable given its stated objective of 35 sq. ft. per student; and

WHEREAS, in addition, the applicant states that the proposed enlargement will allow greater flexibility in structuring curriculum and provide significantly more recreation space than is currently available; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information regarding the streetscape, adjoining properties, the movement of bus traffic along the site, and the proposed screening from the nearby residences; and

WHEREAS, in response, the applicant submitted: (1) a streetscape and radius diagram; (2) photographs of the adjoining properties; and (3) revised plans depicting the bus loading area and the opaque fence separating the site from the nearby residences; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated May 20, 2008, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received January 13, 2014'- Nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 98,388 sq. ft. of floor area (1.97 FAR); a maximum lot coverage of 66.07 percent; setbacks of 15'-0", 20'-11 9/16", and 1'-8";

THAT the landscaping, bus loading, and fencing will be in accordance with the BSA-approved plans;

THAT construction will proceed in accordance with ZR § 72-23;

THAT all conditions from the prior grant will remain in effect, except as otherwise stated herein;

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

823-19-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Minzer, owner.

SUBJECT – Application April 20, 2012 – Amendment of a previously approved variance which permitted a one story warehouse (UG 16). The application seeks to construct an as-of-right two-story community facility (UG 4) atop the warehouse and pursuant to ZR §§ 11-412 and 11-413 reduce the warehouse space to accommodate 13 required accessory parking spaces for the proposed community facility use. R5 zoning district.

PREMISES AFFECTED – 1901 10th Avenue, southeast corner of East 19th Street and 10th Avenue, Block 890, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to March 25,

MINUTES

2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

5-28-BZ

APPLICANT – Eric Palatnik, P.C., for Steven Feldman, owner; Anwar Ismael, lessee.

SUBJECT – Application August 20, 2013 – Amendment (§11-413) of a previously approved variance which permitted the operation of an automotive service station (UG 16B). The amendment seeks to change the use to a car rental establishment (UG 8). R6 zoning district.

PREMISES AFFECTED – 664 New York Avenue, west side of New York Avenue, spanning the entire length of the block between Hawthorne Street and Winthrop Street, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

923-77-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1899-1905 McDonald Avenue Associates, LLC, owner.

SUBJECT – Application November 14, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted a one-story manufacturing building which expired on May 31, 2013. R5 (OP) zoning district.

PREMISES AFFECTED – 1905 McDonald Avenue, east side of McDonald Avenue, 105 ft. south of Quentin Road, Block 6658, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

16-93-BZ

APPLICANT – Carl A. Sulfaro, for 110 Christopher Street, LLC, owner.

SUBJECT – Application November 15, 2013 – Extension of Term (§11-411) of a previously approved variance (§72-21) which permitted retail (UG 6) in the cellar of an existing five-story and multiple dwelling, which expires on February 23, 2014. R6 zoning district.

PREMISES AFFECTED – 110 Christopher Street, south side of Christopher street 192'-6.26 West of Bleeker Street, Block 588, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

41-11-A

APPLICANT – Eric Palatnik, P.C., for Sheryl Fayena, owner.

SUBJECT – Application April 12, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R-6 zoning district. R4 zoning district.

PREMISES AFFECTED – 1314 Avenue S, between East 13th and East 14th Streets, Block 7292, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to complete construction of a two-story, single-family residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, with continued hearings on November 26, 2013, and January 14, 2014, and then to decision on February 4, 2014; and

WHEREAS, the subject site is located on the south side of Avenue S, between East 13th Street and East 14th Street, within an R4-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Avenue S, and a total lot area of 2,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story, single-family residential building which, in 2006, was enlarged at the rear, resulting in an increase in floor area from 1,971 sq. ft. of floor area (0.99 FAR) to 2,709 sq. ft. of floor area (1.4 FAR) (the “Building”); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former R6 zoning district; and

WHEREAS, on January 11, 2006, Alteration Permit No. 302066136-01-AL (hereinafter, the “Alteration Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on February 15, 2006, (hereinafter, the “Enactment Date”), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, the Building, which is a single-family residence with 2,709 sq. ft. of floor area (1.4 FAR), no side yards, and a rear yard with a depth of 17 feet, does not comply with the current zoning, which allows only single-family residences with a maximum FAR of 0.75, one side yard with a

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minimum width of eight feet, and a rear yard with a minimum depth of 30 feet; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits but had not completed construction; and

WHEREAS, accordingly, the applicant now seeks recognition of vested right to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated September 11, 2013, DOB stated that the Alteration Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as noted above, the applicant obtained a permit to enlarge the Building at the rear and performed certain work prior to the Enactment Date; and

WHEREAS, specifically, the applicant states that the work it performed constitutes substantial construction, in that, prior to the Enactment Date, it performed: 100 percent of the excavation, footings, concrete walls, exterior, roof finish, skylights, windows, and 50 percent of the electrical and exterior stucco finish; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; copies of cancelled checks; construction permits; and photographs of the site; and

WHEREAS, at hearing, the Board requested further documentation regarding the timing of the work performed; and

WHEREAS, in response, the applicant provided affidavits from the owner of the site and from a neighbor;

both affidavits attest to the timing and nature of the work performed prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before and after the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant represents that the total expenditure paid for the enlargement is \$77,600 (including \$51,000 in hard costs), or approximately 61 percent, out of the \$127,610 cost to complete; and

WHEREAS, as noted, the applicant has submitted copies of cancelled checks and affidavits in support of this representation; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant notes that the R4-1 floor area and yard regulations are significantly more restrictive than the R6 regulations; specifically, whereas a residence with a 3.0 FAR and no side yards or rear yard is permitted in an R6 zoning district (because the site is within a 100 feet of a corner), in an R4-1 district, the maximum permitted FAR is 0.75, and one side yard with a minimum width of eight feet and a rear yard with a minimum depth of 30 feet are required; and

WHEREAS, accordingly, the applicant states that, in order to comply with the R4-1 regulations, it would have to restore the building to its prior condition, which even under the R4-1 regulations would be non-complying; and

WHEREAS, the applicant represents that restoring the building to its prior condition would result in a serious economic loss to the applicant, because all monies spent to date will be lost and additional expenditures will be required, without any increase in the value of the Building; and

WHEREAS, the Board agrees that complying with the R4-1 district regulations would result in a serious economic loss for the applicant; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the

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expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 302066136-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, February 4, 2014.

164-13-A

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse Department of Buildings’ determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

154-13-BZ

CEQR #13-BSA-138K

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated May 10, 2013, acting on DOB Application No. 320688029, reads, in pertinent part:

Proposed commercial building cannot be built in R5 zone, per Section 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with continued hearings on December 10, 2013 and January 14, 2014, and then to decision on February 4, 2014; and

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

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

WHEREAS, the subject site includes all of Block 8341, which comprises Lots 100, 113, 118, 120, 121, and 125 and is bounded by Ralph Avenue, East 73rd Street, Bergen Avenue, and Avenue K; and

WHEREAS, the site, which is wholly within an R5 zoning district, has 237.76 feet of frontage along Ralph Avenue, 567.51 feet of frontage along East 73rd Street, 696.15 feet of frontage along Bergen Avenue, 200 feet of frontage along Avenue K, and a lot area of 127,535 sq. ft.; in addition, a sewer easement encumbers a portion of the site for the full length of Ralph Avenue; and

WHEREAS, the site is occupied by six, three-story residential buildings with a total of 159,418 sq. ft. of floor area (1.25 FAR) and 144 dwelling units (affordable housing), and 167 parking spaces (the “Development”); 51 of the parking spaces are driveway spaces appurtenant to the buildings, 51 are within the buildings, and 65 are provided for-pay in an at-grade v-shaped parking lot in portions of Lots 118 and 121 along Ralph Avenue and Bergen Avenue (the “Parking Lot”); and

WHEREAS, the applicant represents that, in connection with this application, a new tax lot, Lot 135, will be formed within the site from the northwest portions of Lots 118 and 112; Lot 135 will have 162.16 feet of frontage along Bergen Avenue, 170.43 feet along Ralph Avenue, and approximately 16,500 sq. ft. of tax lot area; and

WHEREAS, the applicant states that the Development was completed around 2006 and included a partial build-out of three mapped but unbuilt public roadways (Bergen Avenue, Avenue K, and East 73rd Street); and

WHEREAS, the applicant notes that the Development was financed through the New York City Housing Development Corporation’s (“HDC”) New Housing Opportunities Program (“NewHOP”), with a required debt-service-coverage-ratio (“DSCR”) of 1.20, and in order to

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satisfy the DSCR for the site, the Development's revenue stream included revenue from the Parking Lot; however, in 2011, the City widened Bergen Avenue and installed 70 angled, unmetered parking spaces; and

WHEREAS, accordingly, the applicant represents that revenue from the Parking Lot has sharply declined, the applicant's ability to cover the 1.20 DSCR is in jeopardy, and, absent the requested relief, an affordable housing project is in danger of mortgage default; and

WHEREAS, therefore, in order to offset the lost revenue from the Parking Lot and to appropriately account for the unique hardships inherent in the original development of the site, the applicant proposes to construct on Lot 135 a one-story commercial building (Use Group 6) with 5,162 sq. ft. of floor area (0.04 FAR) and an accessory parking lot with 18 spaces; and

WHEREAS, because Use Group 6 is not permitted within the subject R5 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lack of adjacent sewer lines; (2) the existence of a sewer easement, which prohibits construction on the westernmost portion of the site; (3) the requirement to construct abutting public roadways; and (4) the historic use of a portion of the site for a dumping ground; and

WHEREAS, the applicant states that when the Development was constructed, the site lacked adjacent sewer lines along Bergen Avenue and East 73rd Street, and the nearest connectible sanitary sewer ran down Ralph Avenue, along the western portion of the site; as such, the developer had to construct an on-site private sewer line running the full length of Block 8341, as well as a pumping station with sewage grinders and an emergency generator, and 69 drywells for storm water management, at significant cost; and

WHEREAS, the applicant states that the costs associated with the construction of the sanitary and storm sewer systems were further increased by the existence of a 120-inch sewer main running parallel to Ralph Avenue and a related sewer easement, which extends for a depth of 60 feet into the site; such easement also constrained where the residential buildings could be located, making two of the six buildings further from the main than would have been required if there were no easement; and

WHEREAS, the applicant asserts that the site was also uniquely burdened by having to build out portions of mapped but unbuilt Bergen Avenue, Avenue K, and East 73rd Street; and

WHEREAS, finally, the applicant contends that illegal dumping at the site prior to the construction of the Development was a unique physical condition that created an unnecessary hardship in developing the site; in particular, when the site was originally acquired, it was an abandoned construction site with in-place foundations filled with dirt, debris, and garbage; accordingly, the site required considerable soil excavation and removal as well as special

removal and disposal of the landfill-type garbage that had accumulated at the site; such operations increased construction costs beyond that which would have been typical for a similarly-sized project; and

WHEREAS, the Board finds that the site's lack of adjacent sewers, encumbrance by a sewer easement, lack of built-out abutting public roadways, and historic use as a dumping ground created an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, the applicant states that because the site was developed through HDC financing and the NewHOP program, it must adhere to the 1.20 DSCR while providing affordable housing at the site; as originally conceived, the Development's revenue—including the Parking Lot revenue—was sufficient to cover the DSCR; however, with the decline of the Parking Lot revenue due to the availability of free parking spaces along Bergen Avenue, the applicant states that it can no longer offset the premium costs for developing the site; and

WHEREAS, the applicant explored the feasibility of constructing an additional residential building on a portion of Lot 121, east of the sewer easement; in addition to requiring a variance for floor area (the site is already at the maximum permitted FAR of 1.25), a new residential building on the site would have too few units to satisfy NewHOP requirements; and

WHEREAS, therefore, the applicant states that only the proposal will generate the amount of revenue necessary to maintain the 1.20 DSCR and avoid a mortgage default; and

WHEREAS, in support of this statement, the applicant submitted a financial analysis, which studied the Development's DSCR in light of the declining revenues of the Parking Lot and the projected revenues of the proposed commercial building; and

WHEREAS, the applicant concluded that the proposal will allow the Development to maintain the required DSCR, which in light of the unique financing of the Development, is tantamount to providing a positive rate of return; and

WHEREAS, at hearing, the Board directed the applicant to provide detailed information regarding: (1) the structure of its financing; and (2) its construction costs associated with the site's unique conditions; and

WHEREAS, in response, the applicant provided an itemized and annotated timeline of the Development's costs and financing, and a copy of its builder's pavement plan (depicting the extent of the roadway construction) and its site drainage plan (depicting the sanitary and storm sewer systems); and

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

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with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that the immediate area is characterized by a mix of low- to medium-density residential and commercial uses with some manufacturing/industrial uses, including a large water treatment facility across Bergen Avenue; and

WHEREAS, in support of this statement, the applicant submitted a land use map and photographs depicting the mixed-use nature of the neighborhood; based on the map, the proposed commercial building will be immediately adjacent to either parking areas or commercial (across Ralph Avenue) or industrial uses (across Bergen Avenue); and

WHEREAS, as to bulk, the applicant states that the proposed commercial building is smaller or comparable to other buildings (both residential and commercial) located along Ralph Avenue; and

WHEREAS, in addition, the applicant asserts that the bulk of the building is modest in comparison to what is permitted in the C2-2 district mapped directly across Ralph Avenue from the site; specifically, if the proposed building on Lot 135 were considered to be on its own zoning lot, as noted above, its lot area would be 16,031 sq. ft. and its FAR would be 0.32, which represents less than one-third of the 1.0 FAR permitted in a C2-2 district; and

WHEREAS, likewise, the applicant states that the proposed wall height of 18 feet is 12 feet less than the maximum permitted wall height (30 feet) in the C2-2 district; also, while there are no yard regulations for a commercial building in an R5 district, the building has a yard facing Bergen Avenue with a width of approximately five feet and a yard facing Ralph Avenue with a width of approximately 57 feet; further, there is a 40-foot separation between the proposed building and the nearest dwelling; and

WHEREAS, as to parking, the proposal would allocate 18 parking spaces for the commercial portion of the site and maintain 123 parking spaces for the residences, which is in accordance with ZR § 25-23 and would be in accordance with ZR § 36-21, if the commercial use were permitted; further, as noted above, Bergen Avenue has 70 angled parking spaces directly abutting the site; and

WHEREAS, therefore, the applicant asserts that the proposal is compatible with the surrounding neighborhood in terms of use and bulk, and will have no impact on parking; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of a one-story commercial building and parking lot will not impact nearby conforming uses; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the

surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.13-BSA-138K, dated May 13, 2013; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R5 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received September 18, 2013"– (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: one story; a maximum of 5,162 sq. ft. of floor area (0.04 FAR); side yards with minimum depths of five feet and 57 feet; a maximum wall height of 18 feet; and accessory parking for 18 automobiles;

THAT no fewer than 141 parking spaces (123 accessory to residences and 18 accessory to the commercial building) will be provided at the site;

THAT signage will comply with C1 regulations;

THAT the above conditions will appear on the

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certificate of occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

209-13-BZ

CEQR #14-BSA-005M

APPLICANT – Sheldon Lobel, P.C., for 12 West 21 Land, O.P., owner.

SUBJECT – Application July 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*NY Physical Training Fitness Studio*) within the existing building, contrary to C6-4-A zoning district.

PREMISES AFFECTED – 12 West 21st Street, between 5th Avenue and 6th Avenue, Block 822, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 6, 2013, acting on Department of Buildings (“DOB”) Application No. 121094813, reads in pertinent part:

Physical culture establishment is not permitted as-of-right in a C6-4A zoning district and is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4A zoning district within the Ladies’ Mile Historic District, the legalization of a physical culture establishment (“PCE”) on the second floor of a 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 14, 2014 after due notice by publication in *The City Record*, and then to decision on February 4, 2014; and

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

and

WHEREAS, Community Board 5 Manhattan, expresses no objection to this application; and

WHEREAS, the subject site is located on the south side of West 21st Street, between Fifth Avenue and Avenue of the Americas, within a C6-4A zoning district within the Ladies’ Mile Historic District; and

WHEREAS, the site has approximately 50.5 feet of frontage along West 21st Street, and 4,646 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story commercial building with 54,220 sq. ft. of floor area (11.67 FAR); and

WHEREAS, the PCE occupies approximately 4,242 sq. ft. of floor area on the second floor of the building; and

WHEREAS, the PCE began operation as New York Personal Training Fitness Studio on January 1, 2008; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE are seven days per week, 24 hours per day; and

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

WHEREAS, the Landmarks Preservation Commission has issued a Certificate of No Effect for the interior alterations and the exterior signage, dated October 2, 2013; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; however, the Board has reduced the term of the grant to reflect the period of time that the PCE operated without the special permit; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA005M dated July 8, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-4A zoning district within the Ladies' Mile Historic District, the legalization of a PCE on the second floor of an 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 6, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 1, 2018;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

243-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Henry II Thames LP c/o of Fisher Brothers, owners.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit construction of a mixed use building, contrary to setback requirements (§91-32). C5-5 (LM) zoning district.

PREMISES AFFECTED – 22 Thames Street, 125-129 Greenwich Street, southeast corner of Greenwich Street and Thames Street, Block 51, Lot 13, 14, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated July 22, 2013, acting on Department of Buildings Application No. 121183799, reads, in pertinent part:

Proposed mixed building portion above the maximum base height does not comply with setback regulations; contrary to ZR 91-32; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C5-5 zoning district within the Special Lower Manhattan District (LM), a 70-story mixed-use commercial/residential building, with 439 dwelling units, and commercial use on the first and second floors, which is contrary to the setback regulations set forth at ZR § 91-32; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014, and then to decision on February 4, 2014; and

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

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

WHEREAS, the subject site is located on the southeast corner of Greenwich Street and Thames Street and comprises Lot 13 and Lot 14; and

WHEREAS, Lots 13 and 14 form a single zoning lot (the "Zoning Lot") with a combined lot area of 35,813.70 sq. ft.; Lot 13 has a lot area of 26,727.37 sq. ft., which represents approximately 75 percent of the Zoning Lot's total lot area and Lot 14 has a lot area of 9,086.33 sq. ft., which represents approximately 25 percent of the Zoning Lot; and

WHEREAS, Lot 13 is improved with a now vacant building constructed in two phases – a 6-story structure completed in 1921 and a 14-story addition completed in 1931; it is an individual New York City Landmark (the "Landmark

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Building”), the former American Stock Exchange building, which will remain; Lot 14 is occupied by a vacant ten-story commercial building (the “Lot 14 Building”) which was constructed as a factory in the late 1800’s and which will be demolished; and

WHEREAS, in 1957, pursuant to BSA Cal. No. 847-56-A, the Board granted a variance of Section 271 of the Labor Law which allowed a fire escape located on the north side of the Lot 14 Building to serve as the building’s required second means of egress; and

WHEREAS, the applicant states that the proposed building will include approximately 359,000 sq. ft. of floor area, including unused floor area attributable to Lot 13, and up to 440 residential units; and

WHEREAS, the applicant states that subject to Landmarks Preservation Committee (LPC) approval, the owner of Lot 13 is planning to convert the Landmark Building to a hotel with retail uses on the lower floors at a future date; since the Lot 14 Building is not a designated landmark, the applicant asserts that LPC approval is not required for the proposal; and

WHEREAS, the applicant states that sites within the Special Lower Manhattan District are subject to special street wall and setback regulations, which are set forth at ZR §§ 91-31 and 91-32 and provide that all portions of a building located above a specified maximum base height must set back a specified distance from the street line; and

WHEREAS, ZR § 91-31 states that, except as otherwise provided in that section, the maximum base height will be 85 feet or 1.5 times the width of the street upon which the building fronts and it designates six classes or “types” of streets on which new development is subject to different minimum and/or maximum base heights; and

WHEREAS, ZR § 91-31 further provides that, when a building fronts on two intersecting streets that are subject to different maximum base heights, the higher maximum base height may wrap around to the street with the lower maximum base height for a distance of 100 feet; and

WHEREAS, the applicant states that ZR § 91-32 specifies the required building setback above the applicable maximum base height, which is based on the lot area of the relevant zoning lot; for zoning lots of less than 15,000 sq. ft., a minimum setback of ten feet is required; for zoning lots of between 15,001 and 30,000 sq. ft., a minimum setback of 15 feet is required; and for zoning lots greater than 30,000 sq. ft., a minimum setback of 20 feet is required; and

WHEREAS, the applicant notes that the Lot 14 portion of the Zoning Lot has 82’-8” of frontage on Greenwich Street and 119’-3½” of frontage along Thames Street; and

WHEREAS, the applicant notes that Appendix A, Map 2 of the Special District regulations designates Lot 14’s Greenwich Street frontage as a Type 3 street and its Thames Street frontage as an unclassified street; under ZR § 91-31, along a Type 3 street, the base height of a building will be at least 60 feet or five stories, whichever is less, and may not exceed 85 feet or 1.5 times the width of the street, whichever is greater; and

WHEREAS, the applicant notes that Greenwich Street has a width of 65 feet and, thus, along Greenwich Street, the base height of a new building constructed on Lot 14 may not exceed 97.5 feet; due to ZR § 91-31’s “wrap” provision, all but a small segment of the new building’s Thames Street frontage may likewise have a base height of up to 97.5 feet; and

WHEREAS, the applicant notes that although Lot 14 has a lot area of only 9,086.33 sq. ft., the Zoning Lot, including the site of the Landmark Building, has a total lot area of 35,813.7 sq. ft., thus ZR § 91-32 requires that, above the applicable maximum base height of 97.5 feet, a new building constructed on Lot 14 must set back at least 20 feet along Greenwich Street and along Thames Street; and

WHEREAS, because the proposal reflects a building with a setback of 10 feet on Greenwich Street and a setback of 13 feet on Thames Street, above a height of 76 feet, rather than setbacks of 20 feet on each frontage, waiver of the Special Lower Manhattan District’s setback provision is required; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the in conformance with applicable regulations: (1) existence of the Landmark Building on the Zoning Lot and (2) the configuration of the Zoning Lot with the historic interconnectedness of the buildings; and

WHEREAS, the applicant states the Zoning Lot is unique because most of it is occupied by a designated New York City landmark which was physically and functionally connected to the existing Lot 14 Building for many years and severely constrains any new development on the Zoning Lot; and

WHEREAS, the applicant states that for many years, the building housed the American Stock Exchange and in 2013, the LPC designated the building an individual New York City landmark; and

WHEREAS, the applicant asserts that as a consequence of its landmark status, it is extremely unlikely that the Landmark Building could ever be demolished and replaced with a new building or significantly enlarged so as to permit all or most of the allowable floor area attributable to Lot 13 to be utilized on that parcel, which has a lot area of approximately 9,000 sq. ft.; and

WHEREAS, additionally, the applicant asserts that there are not any sites in proximity to the Zoning Lot that are both eligible under the Zoning Resolution to receive Lot 13’s unused floor area and practically capable of utilizing that floor area; and

WHEREAS, thus, the applicant asserts that the only option for the utilization of most of Lot 13’s unused floor area is to transfer that floor area to Lot 14 and use it in a new development on that parcel, which is what the applicant proposes; and

WHEREAS, as to the uniqueness of the circumstances that affect the site, the applicant provided a map which reflects the nine other designated New York City landmarks located within a 400-ft. radius of the site; and

MINUTES

WHEREAS, the analysis identifies these landmarks and shows the maximum amount of floor area permitted on the landmark site, the amount of floor area in the landmark building, and the available development rights on the landmark site; and

WHEREAS, the applicant's analysis concludes that six of the nine landmarks are currently overbuilt and therefore do not have any excess floor area that can be transferred to a potential development site; although two of the landmark sites - St. George's Syrian Catholic Church and 94 Greenwich Street - have excess development rights, they have already undergone a zoning lot merger with the larger parcel located at 99 Washington Street and their excess development rights are being used in a new hotel that is presently under construction on that parcel; and

WHEREAS, the applicant distinguishes the other merger scenario from its own where a development on the smaller non-landmark portion of the site is severely constrained by the landmark status of approximately 75 percent of the lot area; and

WHEREAS, the applicant states that the last of the nine landmarks shown on is Trinity Church and Graveyard, which contains a large amount of excess development rights and the only other parcel located on the same block is also occupied by a landmark, - the adjacent Trinity Building; therefore, none of the Church's excess development rights can be utilized on that block pursuant to a conventional zoning lot merger; and

WHEREAS, the applicant asserts that the mechanism available for a transfer of the Church's development rights is a City Planning Commission special permit pursuant to ZR § 74-79 and thus it is highly unlikely that a Board variance would be requested in connection with a utilization of Trinity Church's excess development rights; and

WHEREAS, the applicant concludes that there are no other landmark sites in proximity to the site that are affected by the same sort of unique circumstances that create practical difficulties and unnecessary hardship and support the granting of a variance in this case; and

WHEREAS, the applicant notes, that due to the configuration of the zoning lot, there are practical difficulties in utilizing most of the Zoning Lot's available floor area in a new development on Lot 14 in compliance with the Zoning Resolution's applicable setback requirements; and

WHEREAS, as to the interconnectedness of the buildings, the applicant asserts that in 1930, the American Stock Exchange's predecessor (the New York Curb Exchange) purchased the Lot 14 Building and incorporated it into its stock exchange operations; until the exchange closed, the Landmark Building and the Lot 14 Building operated as a unified complex, with the Lot 14 Building containing exchange offices, trading floors and support facilities; and

WHEREAS, the applicant states that the two buildings were connected on floors 2, 8 and 10 of the Lot 14 Building, which correspond to the basement and floors 6 and 8 of the Landmark Building; additionally, the two buildings shared a

number of services and systems; primary and secondary access to both buildings was provided by entrances in the Landmark Building located on Trinity Place and Greenwich Street; and the Lot 14 Building did not have its own accessible at-grade entrance; and

WHEREAS, the applicant asserts that the two tax lots - Lots 13 and 14 - were under the control of the American Stock Exchange and functioned as a unified commercial complex for many years; and

WHEREAS, in support of this contention, the applicant submitted a copy of a New York Times article dated January 5, 1930, which announces that the Hamilton Building, as the Lot 14 Building was then known, had been purchased by the New York Curb Exchange (later the American Stock Exchange) as part of the of its expanded exchange complex; and

WHEREAS, the applicant states that in 2009, the American Stock Exchange ceased trading and in 2011 it sold the entire site to entities related to the current owner of Lot 13; these two entities thereafter merged Lots 13 and 14 into the Zoning Lot and executed a Zoning Lot Development Agreement which allows a specified amount of the unused development rights attributable to Lot 13 to be incorporated into a new development on Lot 14; and

WHEREAS, the applicant states that it is not possible to construct an efficient residential building on Lot 14 that complies with the applicable setback requirements of ZR § 91-32, which are based on the lot area of the much larger combined Zoning Lot; and

WHEREAS, the applicant reiterates that Lot 14 has a lot area of only slightly more than 9,000 square feet, which represents only about 25 percent of the total area of the Zoning Lot and, under ZR § 91-32, the applicable setback requirements are based on the lot area of the affected zoning lot such that if Lot 14 were a discrete zoning lot, above the applicable maximum base height any new development on that parcel would be required to set back only 10 feet from the street line along both Greenwich and Thames streets; and

WHEREAS, the applicant notes that it proposes setbacks of 10 and 13 feet, which would actually exceed the requirements of two setbacks of 10 feet each, if Lot 14 were its own zoning lot; and

WHEREAS, however, because the Zoning Lot comprises Lots 13 and 14 and has a total lot area in excess of 35,000 square feet, above the maximum base height any new development on Lot 14 must set back 20 feet along both Greenwich and Thames streets; and

WHEREAS, the applicant represents that a complying building with the required setbacks of 20 feet along both Greenwich and Thames streets would result in a tall, slender building with small tower floor plates of only 5,382 sq. ft. and that taking into account a double loaded corridor design and space reserved for the building's circulation core, and the additional structural elements required for such a tall and slender building, floor plates of this size permit only five or six apartments per floor which would not have the optimal depths or room widths of New York City apartments; and

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WHEREAS, accordingly, the applicant asserts that the complying building has a net square foot to gross square foot efficiency rate of approximately 70 percent, which is significantly below the real estate industry standard; and

WHEREAS, the applicant asserts that due to the small floor plates, in order for the complying building to utilize all of the available floor area, it would have 85 floors and an elevation of 1,048 feet and would require five high-speed elevators to serve the 85 floors, leading to compounded inefficiencies and premium costs; and

WHEREAS, in contrast, the applicant asserts that the proposed building would have a reduced height with larger tower floor plates of 6,489 sq. ft.; and

WHEREAS, the applicant asserts that taking into account the reduced amount of structural elements needed for a shorter building, these larger floor plates would accommodate seven or eight apartments per floor which would have the optimal depth and room width for residential apartments; and

WHEREAS, the applicant states that the proposed building has a net to gross square foot efficiency rate of approximately 78.5 percent, which is closer to the industry standard than the complying building's efficiency rate; and

WHEREAS, the applicant states that as a consequence of its larger floor plates, the proposed building has 70 stories and an elevation of 882 feet, which makes it significantly shorter than the complying building and it requires only four conventional passenger elevators in contrast to the five high-speed elevators required for the complying building; and

WHEREAS, the applicant identified additional elements of the complex and costly structural system required for the complying building, including: (1) a very high height to width, or "slenderness," ratio of 17:1 in contrast to the proposed building's 13:1 slenderness ratio, which would require additional structure to stiffen the building to resist wind, seismic and gravity loads; (2) the requirement for more concrete walls and reinforcing bar tonnage than the proposed building; (3) in order to resist wind and seismic loads, the complying building would require thicker shear walls than the proposed building; (4) the complying building would require high-strength grade 100 rebar, while the proposed building will use conventional grade 60 rebar; (5) the complying building would require significantly more concrete reinforcing tonnage than the proposed building; (6) the complying building would require thicker foundations than the proposed building; (7) at its upper levels, the complying building would require thicker floor slabs and more or larger reinforcing bars than the proposed building; and (9) in order to accommodate the movement of the façade between floors during periods of high wind, the complying building would require more expensive façade connection detailing than the proposed building; and

WHEREAS, the applicant asserts that there are approximately \$31 million in premium costs associated with a complying building; and

WHEREAS, the applicant states that although Lots 13

and 14 constitute a single zoning lot, Lot 13 is under separate ownership and all of the economic benefits of a redevelopment of the Landmark Building will flow to the owner of that property; and

WHEREAS, the Board finds that the historic configuration of the lot and the presence of the Landmark Building in the aggregate create an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in compliance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant assessed the financial feasibility of (1) the complying mixed-use commercial/residential building with the required setbacks and (2) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board asked the applicant to explain the effect of the Inclusionary Housing and tax abatements on the project's feasibility; and

WHEREAS, in response, the applicant states that 20 percent of the apartments will be affordable units that will be rented to households earning no more than 60 percent of the area median income, which will allow for Section 421-a real estate tax exemption for a 20-year period; the applicant estimates that the tax exemption will have a value of approximately \$38.7 million; and

WHEREAS, the applicant notes that under the Zoning Resolution, the affordable dwelling units will also generate Inclusionary Housing development rights, which, however, may not be used on the site but may be used on sites within the Special District that are zoned C6-4 or on other eligible sites within Community Board 1 or within a half-mile radius of the site (per ZR § 91-22); and

WHEREAS, the applicant estimates the value of the transferable Inclusionary Housing development rights is \$38.9 million; and

WHEREAS, in response to questions about whether the upper floor apartments in the taller complying building would have greater value than the upper floors in the proposed building, the applicant stated that they would be of greater value but the inefficiencies associated with the smaller floor plates in the complying building would produce significantly less rentable square footage than the more efficient floor plate in the proposed building and would lead to the complying building achieving less rent than the proposed building; and

WHEREAS, accordingly, the applicant states that the higher upper floor rents in a complying building would not offset its significantly higher construction costs; and

WHEREAS, in response to the Board's questions about the value of the Landmark Building, the applicant states that the site will be redeveloped in the future with 177,705 sq. ft. of hotel and retail floor area, which includes 143,335 sq. ft. of existing floor area and 34,370 sq. ft. of unbuilt floor area that will be constructed within the building envelope; and

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WHEREAS, the applicant's analysis concluded that the tax exemptions and development rights transfer are standard for residential development and are not alone able to offset the premium costs associated with the hardship at the site; and

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

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

WHEREAS, the applicant notes that the proposed commercial and residential uses are both conforming and are compatible with the surrounding area; and

WHEREAS, the applicant notes that a building envelope with setbacks of 10 feet on Greenwich Street and 13 feet on Thames Street would be permitted as of right if Lot 14 did not share a zoning lot with the Landmark Building, thus, the building envelope is contemplated by the zoning; and

WHEREAS, the applicant notes that the complying building would have 85 stories and a height of 1,048 ft., compared to the 70 stories and 882 feet of the proposed, which is a difference of 15 stories and 166 feet of height and that the proposed is more compatible with the surrounding neighborhood context; and

WHEREAS, additionally, the applicant asserts that the proposed building will be more compatible with its surrounding context and is being designed with a lower base height to relate to the height of the significant architectural features of the adjacent Landmark Building; and

WHEREAS, the applicant notes that although the applicable height and setback regulations allow the base of a building on this site to reach a height of 97.5 feet before a setback is required, the base of the proposed building will reach a height of only 76 feet, which allows the top of the base to line up with the cornice of the Landmark Building and promote a harmonious relationship between the two buildings; and

WHEREAS, although the application for setback waiver does not require a CEQR analysis, the applicant performed a shadow analysis to respond to the Board's inquiry about shadows, which reflects that the proposed building would cause only small incremental shadows on the September 11th Memorial and Zucotti Park compared to the existing conditions; and

WHEREAS, further, the applicant notes that the proposed shadows would be incremental compared to those associated with the complying building because although the proposal reflects larger floor plates, the complying building would have a significantly greater height than the proposed building and the existing tall buildings in the surrounding area already create shadow impacts; and

WHEREAS, specifically, the applicant states that when

compared to a complying design, the proposed building would not have any incremental shadows on Zucotti Park at any time of the year and would have a very small shadow on the September 11th Memorial only in the winter, during a brief period of the day; and

WHEREAS, the applicant states that the analysis concludes that when compared with a complying building, the incremental shadows caused by the proposed building will be negligible and even less in comparison to existing conditions in the area; and

WHEREAS, the applicant asserts that the site is immediately south of the World Trade Center site, which is being redeveloped with several tall commercial towers, and directly north of an area where older street-wall buildings of various heights predominate; and

WHEREAS, the applicant submitted a comparison study of the proposed building and the complying building within the surrounding context, in support of the assertion that the proposed building will follow the height gradient formed by the buildings in these two distinct areas but that the taller complying building would disrupt this contextual gradient; and

WHEREAS, the applicant also notes that the Thames Street sidewalk abutting the site is currently only 3'-5" wide and that in order to satisfy the pedestrian circulation requirements of ZR § 91-42, the applicant will incorporate within the proposed building a covered walkway with a depth of 10'-0" that extends along its entire Thames Street frontage, which will provide circulation space with a total width of 13'-5", an improvement over the current narrow sidewalk; and

WHEREAS, the applicant also notes that the proposed building will provide a significant measure of flood protection including: the building's circulation core, including its elevators and service equipment, will be located at the eastern end of the site, which has an elevation that is approximately five feet higher than the western end of the site; and the building's essential electrical equipment will be located on the third floor rather than the cellar, where such equipment is typically located; and

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

WHEREAS, the applicant asserts that the practical difficulties and economic hardship associated with the complying building arise from the unique development history of the Zoning Lot, which is improved with the Landmark Building, a designated City landmark, and the adjacent Lot 14 Building, which for many years were owned and operated by the American Stock Exchange as a unified and interconnected complex; and

WHEREAS, the applicant notes that in 2012, the former owner of Lot 14 recorded a Declaration of Zoning Lot Restrictions which declared Lots 13 and 14 to be a single zoning lot; however, the applicant asserts that, as a

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result of their common control and ownership, these two parcels have satisfied the definition of a ZR § 12-10 “zoning lot” since that provision took effect in 1961 and, accordingly, they could have been treated and developed as a single zoning lot at any time since then; and

WHEREAS, the applicant asserts that the recent recording of a zoning lot declaration for these two parcels merely confirmed and formalized their longstanding presumed zoning status; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site’s unique physical conditions; and

WHEREAS, the applicant notes that the setback of 10 feet from street line along Greenwich Street and 13 feet from the street line along Thames Street, rather than 20 feet on both frontages would satisfy the setback requirement of 10 feet along both streets if Lot 14 constituted a discrete zoning lot; and

WHEREAS, the applicant asserts that the proposed setbacks are the minimum to efficiently accommodate the necessary circulation core and two rows of apartments with the appropriate depths and room widths for rental apartments; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a within a C5-5 zoning district within the Special Lower Manhattan District (LM), a 70-story mixed-use commercial/residential building, with 439 dwelling units, and commercial use on the first and second floors, which is contrary to the setback regulations set forth at ZR § 91-32; and *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received October 15, 2013” –(17) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building will be as follows: a maximum floor area of 536,835.5 sq. ft. (14.99 FAR), 70 stories, 956.78 feet building height, and minimum setback of 10 feet on Greenwich Street and 13 feet on Thames Street, all as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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

THAT construction will proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

249-13-BZ

CEQR #14-BSA-027K

APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.

SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to allow a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building, C4-3 zoning district.

PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 25, 2013, acting on Department of Buildings (“DOB”) Application No. 301509923, reads in pertinent part:

Proposed physical culture establishment is contrary to that allowed as-of-right under ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-3 zoning district, the operation of a physical culture establishment (“PCE”) on the second story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013 after due notice by publication in *The City Record*, with a continued hearing on January 14, 2014 and then to decision on February 4, 2014; and

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

WHEREAS, Community Board 1, Brooklyn,

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recommends disapproval of this application; and

WHEREAS, the subject site is an irregular lot located at the northeast corner of the intersection of Graham Avenue, Flushing Avenue, and Broadway, with a portion of the lot extending to Debevoise Street, within a C4-3 zoning district; and

WHEREAS, the site has 87.67 feet of frontage along Graham Avenue, 203.56 feet of frontage along Flushing Avenue, 38.75 feet of frontage along Broadway, 110 feet of frontage along Debevoise Street, and 38,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story commercial building with 131,580 sq. ft. of floor area (3.4 FAR); and

WHEREAS, the PCE is proposed to occupy approximately 15,953 sq. ft. of floor area on the second story of the building; and

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

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 11:00 p.m., and Sunday from 7:00 a.m. to 9:00 p.m.; and

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

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) whether any portion of the PCE was proposed on the first story; and (2) whether there were any residential uses in the subject building or in any adjacent buildings; and

WHEREAS, in response, the applicant clarified that although the PCE is accessed through a common commercial lobby on the first story, there is no PCE program space on the first story; in addition, the applicant represented that there are no residential uses in the subject building or in any adjacent building; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA027K dated August 12, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C4-3 zoning district, the operation of a PCE on the second story of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 6, 2013” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 4, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

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

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

MINUTES

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

267-13-BZ

CEQR #14-BSA-038M

APPLICANT – Law Office of Jay Goldstein, PLLC, for 689 Fifth Avenue LLC, owner; Fit Life 5th Avenue LLC, lessee. SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Bar Method*). C5-3 (MID) zoning district.

PREMISES AFFECTED – 689 5th Avenue aka 1 East 54th Street, northeast corner of 5th Avenue and East 54th Street, Block 1290, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 4, 2013, acting on Department of Buildings (“DOB”) Application No. 121741838, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment (“PCE”) on the ninth story of a 14-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 14, 2014 after due notice by publication in *The City Record*, and then to decision on February 4, 2014; and

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

WHEREAS, Community Board 5, Manhattan, expresses no objection to this application; and

WHEREAS, the subject site is located at the northeast corner of the intersection of Fifth Avenue and East 54th Street, within a C5-3 zoning district within the Special Midtown District; and

WHEREAS, the site has 50 feet of frontage along Fifth Avenue, 125 feet of frontage along East 54th Street, and approximately 6,925 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 14-story commercial building with 85,761 sq. ft. of floor area (12.38 FAR); the building is known as the Aeolian Building and it is designated as an individual New York City landmark by the Landmarks Preservation Commission; and

WHEREAS, the PCE is proposed to occupy approximately 6,849 sq. ft. of floor area on the ninth story of the building; and

WHEREAS, the PCE will be operated as The Bar Method; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 5:30 a.m. to 9:00 p.m.; and

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

WHEREAS, the Landmarks Preservation Commission has issued a Certificate of No Effect for the interior alterations, dated September 5, 2013; and

WHEREAS, at hearing, the Board questioned whether any exterior signage was proposed for the PCE; and

WHEREAS, in response, the applicant stated that the PCE would not be displaying any signage on the exterior of the building; and

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) whether any portion of the PCE was proposed on the first story; and (2) whether there were any residential uses in the subject building or in any adjacent buildings; and

WHEREAS, in response, the applicant clarified that although the PCE is accessed through a common commercial lobby on the first story, there is no PCE program space on the first story; in addition, the applicant represented that there are no residential uses in the subject building or in any adjacent building; and

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

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

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

MINUTES

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No.14BSA038M dated September 10, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment (“PCE”) on the ninth story of a 14-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 13, 2013 – Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 4, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

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

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

THAT DOB must ensure compliance with all of the

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

211-12-BZ

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for decision, hearing closed.

263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for adjourned hearing.

311-12-BZ

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block

MINUTES

1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for adjourned hearing.

6-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school (*Yeshiva Ohr Yisrael*), contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for decision, hearing closed.

64-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Chakkalo and Abdo Chakkalo, owners.

SUBJECT – Application February 11, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue, Block 7184, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

103-13-BZ

APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC, owner.

SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building, contrary to §42-10 zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256' west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 4,

2014, at 10 A.M., for continued hearing.

124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single-family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

MINUTES

192-13-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.

SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for decision, hearing closed.

220-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yitzchok Perlstein, owner.

SUBJECT – Application July 22, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue J, north side of Avenue J between East 21st and East 22nd Street, Block 7585, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

234-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Dov Lipschutz, owner.

SUBJECT – Application August 16, 2013 – Variance (§72-21) for the enlargement of an existing two-family detached residence to be converted to a single-family home, contrary to minimum front yard (§23-45(a)); and less than the required rear yard (ZR §23-47). Special Permit (§73-621) for an enlargement which is contrary to floor area (ZR 23-141). R3-2 zoning district.

PREMISES AFFECTED – 1653 Ryder Street, aka 1651 Ryder Street, Located on the northeast side of Ryder Street between Quentin road and Avenue P, Block 7863, lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for decision, hearing closed.

272-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 78-14 Roosevelt LLC, owner; Blink 78-14 Roosevelt, Inc., lessee.

SUBJECT – Application September 18, 2013 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within a portions of an existing commercial building. C2-3/R6 & R5 zoning district.

PREMISES AFFECTED – 78-02/14 Roosevelt Avenue aka 40-41 78th Street and 40-02 79th Street, south side of Roosevelt Avenue between 78th Street and 79th Street, Block 1489, Lot 7501, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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23-14-A

198-35 51st Avenue, 51st Avenue between Weeks Lane and 199th Street, Block 7374, Lot(s) 13, Borough of **Queens, Community Board: 11.** Common Law Vesting Rights: appeal seeking a determination that the owner has acquire a common law vested right to complete constriction under the prior R3-2-X zoning district. district.

24-14-BZ

106-02 Sutter Avenue, Sout6h side of Sutter Avenue on the corner formed by the intersection of 106th Street and Sutter Avenue, Block 11506, Lot(s) 42, Borough of **Queens, Community Board: 10.** Variance (§72-21) to permit the vertical enlargement of and existing one family residence and a conversion from on dwelling unit to two dwelling units in an R4 zoning district contrary to front and side yards §23-45 and §23-46. R4 district.

25-14-BZ

1601-1323 Avenue J, North side of Avenue J from East 16th Street to East 17th St. extending north on East 17th St., Block 6709, Lot(s) 32, 34, 36, Borough of **Bronx, Community Board: 14.** Variance (§72-21) to permit the construction of a variance to allow the enlargement of an existing four story Yeshiva. R2 & R5 zoning district. R2 & R5 district.

26-14-BZ

45 East 75th Street, North Side, East 75th Street through block to S/S E 76th between Park & Madison Avenues, Block 1390, Lot(s) 28, 46, Borough of **Manhattan, Community Board: 8.** Variance (§72-21) to permit the construction of the school (Hewett) for a bulk variance to construct a rooftop and rear yard addition contrary §24-591 & §24-36. R8B zoning district. R8B district.

27-14-BZ

496 Broadway, Located on the east side of Broadway between Broome Street and Spring Street, Block 483, Lot(s) 4, Borough of **Manhattan, Community Board: 2.** Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar contrary to §42-14D(2)(b). M1-5B zoning district M1-5B district.

28-14-BZ

3540 Nostrand Avenue, Westside of Nostrand Avenue, between Avenue V and Avenue W, Block 7386, Lot(s) 114 & 117, Borough of **Brooklyn, Community Board: 15.** Special Permit (§73-243) to permit the continued use and (Use Group 6) eating and drinking establishment with an accessory drive-through. C1-2/R4 zoning district. R4/C1-2 district.

29-14-BZ

1255 East 27th Street, East side of East 27th Street, 325 feet from the North corner of Avenue M, Block 7645, Lot(s) 25, Borough of **Brooklyn, Community Board: 14.** Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (23-14(A) side yard, 23-461, in an R2 zoning district R2 district.

30-14-BZ

6101 16th Avenue, Beginning at the NE corner of 62nd St. and SE side of 16th Ave. 110' NE, 80'SE, 100'NE 190'NW, Block 5524, Lot(s) 1, Borough of **Brooklyn, Community Board: 11.** Variance (§72-21) proposed enlargement to an exiting school (Use Group 3) is contrary to §§42-00 & 43-43. M1-1 zoning district. M1-1 district.

31-14-BZ

165 Spencer Street, 32'6" Northerly from the corner of the northerly side of Willoughby Avenue and easterly side of Spencer Street, Block 1751, Lot(s) 3, Borough of **Brooklyn, Community Board: 3.** Special Permit (§73-19) proposed conversion of an existing Synagogue building (Use Group4 to (Use Group 3). 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

MARCH 4, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 4, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application October 16, 2013 – Amendment of a previously approved Special Permit (§73-36) which permitted operation of a physical culture establishment (*Bodhi Fitness Center*). The amendment seeks to enlarge the PCE space by 3,999 sq. ft. M1-1, C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

APPEALS CALENDAR

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application December 18, 2013 – Extension of time and complete construction and secure Certificates of Occupancy. R5D zoning district.

PREMISES AFFECTED – 69-17 38th Avenue aka 69-19 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64, Borough of Queens.

COMMUNITY BOARD #2Q

ZONING CALENDAR

163-13-BZ

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application May 30, 2013 – Special Permit (§73-44) to permit the reduction of the allowed parking spaces contrary to §36-31 in a C4-2 district, the alteration of the 2-story and cellar Use Group 6 of professional offices also include a vertical and horizontal enlarged cellar third floor and a parking requirement category B1. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, 39th Avenue, east of College Pt. Boulevard, Block 4973, Lot 12,

Borough of Queens.

COMMUNITY BOARD #7Q

252-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eli Schron, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R-2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, east side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

270-13-BZ

APPLICANT – Eric Palatnik, P.C., for Margaret Angel, LLC, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141). R3-1 zoning district.

PREMISES AFFECTED – 288 Dover Street, Dover Street, south of Oriental Boulevard, Block 8417, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

273-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for 321-23 East 60th Street LLC, owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to vary the requirements of the zoning resolution to permit within a C8-4 commercial zoning district, the construction of an eight-story residential building containing 28 dwelling units which would not comply with the use regulations of §32-10.

PREMISES AFFECTED – 321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit. Block 1435, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #8M

281-13-BZ

APPLICANT – Joshua Rinesmith, Warshaw Burstein LLP for FC-Canal LLC, owner; 320 Canal Fitness Group, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Planet Fitness) on the cellar and first floor of the existing building. C6-2A zoning district.

PREMISES AFFECTED – 350-370 Canal Street, premises is comprised of 3 properties located on the west portion of block 211 at the intersection of Canal Street and Church

CALENDAR

Street. Block 211, Lot(s) 3, 29, 7501. Borough of Manhattan.

COMMUNITY BOARD #1M

291-13-BZ

APPLICANT – Eric Palatnik, P.C., for 840-842 LLC, owner; Crunch LLC, lessee.

SUBJECT – Application October 22, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Crunch LLC*) within a portion of an existing building. C8-2 zoning district.

PREMISES AFFECTED – 842 Lefferts Avenue, south side of Lefferts Avenue, approximately 262’ west of intersection of Utica Avenue and Lefferts Avenue, Block 1430, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a residential building contrary to §42-10. M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 28, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Avenue, LLC, owner.

SUBJECT – Application August 26, 2013 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage, which expired on January 11, 2012; Waiver of the Rules. M1-6 (*Garment Center*) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of 7th Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for an existing parking garage; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, with a continued hearing on January 14, 2014, and then to decision on February 11, 2014; and

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

WHEREAS, the site is located on the southeast corner of the intersection at Seventh Avenue and West 38th Street, within an M1-6 zoning district within the Special Garment District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1949 when, under the subject calendar number, the Board granted a variance to permit the construction of a garage building for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on March 17, 2009, the Board granted an extension of the term until June 28, 2019; and

WHEREAS, in addition, on January 11, 2011, the Board granted an extension of time to obtain a certificate of occupancy, which expired on January 11, 2012; and

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

WHEREAS, at hearing, the Board directed the applicant to: (1) explain why a DOB permit has not yet been obtained for the parking stackers, given that obtaining a permit was a condition of the prior grants; (2) provide a timetable for the necessary repairs, including waterproofing; and (3) clarify whether the location of the stackers is in accordance with the BSA-approved plans; and

WHEREAS, in response, the applicant states that in order to obtain a permit to legalize the stackers, it must submit a report of special inspection completed by an engineer on DOB form TR1; the applicant represents that it has retained a consultant to complete the form and expects to submit the form and obtain the permit soon; and

WHEREAS, the applicant notes that, on December 16, 2013, it obtained an engineer’s report confirming that the existing building is structurally capable of carrying the loads imposed by the stackers (in addition to anticipated snow loads); and

WHEREAS, as to the timetable of necessary repairs, the applicant states that the work requires warmer weather and that it is in the process of obtaining a contractor so that work may commence in the spring; and

WHEREAS, as to the location of the stackers, the applicant provided a photograph showing that the stackers have been moved further back from the parapet wall in order to be less visible from the street; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 29, 1949, so that as amended this portion of the resolution shall read: “to grant a one year extension of time to obtain a certificate of occupancy, to expire on January 11, 2015; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a certificate of occupancy will be obtained by January 11, 2015;

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

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

(DOB Application Nos. 102460089 and 121851683)

Adopted by the Board of Standards and Appeals

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February 11, 2014.

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application August 13, 2013 – Extension of term of a special permit (§73-243) allowing an eating and drinking establishment (*McDonald's*) with accessory drive-thru which expired on January 18, 2013; Extension of time to obtain a Certificate of Occupancy which expired on September 11, 2013; Waiver of the Rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for an accessory drive-through, which expired on January 18, 2013, and an extension of time to obtain a certificate of occupancy, which expired on September 11, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, with a continued hearing on January 28, 2014, and then to decision on February 11, 2014; and

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

WHEREAS, the site is located on the northeast corner of 24th Avenue and 86th Street, within a C1-3 (R5) zoning district; and

WHEREAS, the site is operated as a McDonald's eating and drinking establishment (Use Group 6); and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board adopted a resolution granting a special permit for the installation of an accessory drive-through facility for an existing eating and drinking establishment, for a term of five years; and

WHEREAS, the special permit was subsequently extended and amended at various times; and

WHEREAS, on July 22, 2008, the Board granted a five-year extension of term, which expired on January 18, 2013; a condition of the grant was that a certificate of occupancy be obtained by January 22, 2009; however, on September 11, 2012, the Board granted a one-year extension of time to obtain

a certificate of occupancy, which expired on September 11, 2013; and

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

WHEREAS, the applicant states that a certificate of occupancy has not yet been obtained due to open applications and open violations at DOB; and

WHEREAS, at hearing, the Board questioned whether the signage at the site is in compliance with C1 district regulations and directed the applicant to clarify the restaurant's hours of operation, as well as the status of open DOB violations at the site; and

WHEREAS, as to the signage, the applicant explained that directional signage is excluded from the signage calculations, per the ZR § 12-10 definition of "sign"; and

WHEREAS, as to the hours of operation, the applicant provided a letter from McDonald's, which indicates that the hours of operations are Sunday through Thursday, from 6:00 a.m. to 12:00 a.m., and Friday and Saturday from 6:00 a.m. to 1:00 a.m.; and

WHEREAS, as to the open violations, the applicant provided a certification from its architect, which indicates that the open violations relate to the expired special permit and will be resolved immediately subsequent to the renewal of the grant; and

WHEREAS, based upon its review of the record, the Board finds that the proposed 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 18, 1983, so that as amended this portion of the resolution reads: "to permit an extension of the term of the special permit for an additional five years, to expire on February 11, 2019, and an extension of six months to obtain a certificate of occupancy, to expire on August 11, 2014; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received January 14, 2014' - six (6) sheets; and *on further condition*:

THAT the grant will expire on February 11, 2019;

THAT signage will comply with the C1 regulations;

THAT directional signage will be limited to a total of 12 sq. ft., per the ZR § 12-10 definition of "sign";

THAT the above condition and all relevant conditions from prior grants will appear on the certificate of occupancy; and

THAT a certificate of occupancy will be obtained by August 11, 2014;

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

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

THAT DOB must ensure compliance with all other

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

(DOB Application No. 310120142)

Adopted by the Board of Standards and Appeals, February 11, 2014.

327-88-BZ

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.
SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in a C4-2 zoning district the enlargement of existing retail stores and offices (Use Group 6) within a mixed residential and commercial building without the required number of accessory off-street parking spaces and loading berths, contrary to ZR §§ 36-21 and 36-62; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013, October 22, 2013, November 26, 2013, and January 14, 2014, and then to decision on February 11, 2014; and

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

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns about open Department of Buildings (“DOB”) violations and the applicant’s overall lack of cooperation; and

WHEREAS, the subject site is a rectangular through lot located on the block bounded by Main Street, Roosevelt Avenue, Union Street and 39th Avenue, within a C4-3 zoning district; and

WHEREAS, the site has 97.33 feet of frontage on Roosevelt Avenue, 97.33 feet of frontage on 39th Avenue, and approximately 17,130 sq. ft. of lot area; and; and

WHEREAS, the site is occupied by a two- and three-

story mixed residential and commercial building with 31,439.07 sq. ft. of floor area (1.88 FAR); and

WHEREAS, on October 21, 1991, under the subject calendar number, the Board granted a variance to allow the enlargement of the building without the required number of accessory off-street parking spaces and loading berths; per ZR §§ 36-21 and 36-62, 52 parking spaces and one loading berth were required for the retail and office uses (Use Group 6) in the building; under the grant, no parking spaces or loading berths were required; and

WHEREAS, the applicant represents that subsequent to the grant and without the Board’s authorization, in 1996, a mezzanine was constructed between the second and third stories, increasing the floor area by 2,296 sq. ft. (from 29,143.07 sq. ft. (1.70 FAR) to 31,439.07 sq. ft. (1.88 FAR)) and increasing the required number of accessory parking spaces on the lot from 52 to 60; in connection with this enlargement, the use of the second story was converted from retail and offices to an eating and drinking establishment; and

WHEREAS, the applicant notes that the 1996 enlargement was completed under DOB permit Application No. 400627835, which referred to the space as a “greenhouse”; and

WHEREAS, the applicant now requests an amendment to legalize the enlargement by increasing the degree of the previously-granted parking waiver by eight spaces; and

WHEREAS, as noted above, the applicant states that the enlargement increased the number of required accessory parking spaces from 52 to 60; and

WHEREAS, the applicant states that, consistent with the basis of the prior grant, the history of development at the site, namely, the existing building’s full-lot coverage and limited cellar height, creates a practical difficulty in providing the required number of accessory parking spaces; and

WHEREAS, specifically, the applicant asserts that the only location on the site where parking could be provided as-of-right is in the cellar; however, creating parking in the cellar would require substantial demolition of existing retail space at the cellar and first story, temporary or permanent displacement of tenants, complex structural work, construction of ramps, and relocation of the sprinkler connection, water main, sewer connection, storm water connection, and electrical units, at significant cost; and

WHEREAS, the applicant notes that even with the additional 2,296 sq. ft. of floor area, the lot is significantly underdeveloped in that its 1.88 FAR is well below the maximum permitted FAR of 3.40; and

WHEREAS, the applicant states that the enlarged portion of the restaurant accommodates 72 persons, and that the second story accommodates 224 persons, for a total restaurant capacity of 296; and

WHEREAS, the applicant contends that the enlargement, while modest, is essential to the operations of the eating and drinking establishment, because it allows for semi-private dining, which makes it popular for community events and professional and/or corporate meetings; and

WHEREAS, the applicant also represents that the semi-

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private dining area is used primarily for events, except on weekends and on holidays, when the demand for seating increases substantially; and

WHEREAS, as such, the applicant states that the enlargement does not negatively impact the surrounding community; and

WHEREAS, the applicant states that the surrounding community is overwhelmingly commercial and includes, across 39th Avenue, a large, metered parking facility; and

WHEREAS, in addition, the applicant represents that parking is unnecessary for the majority of the restaurant's (and the site's) visitors and employees due to the abundance of nearby public transportation, including the No. 7 subway line and the 20 public bus routes within a one-block radius of the site; and

WHEREAS, further, the applicant provided a parking analysis study, which concludes that existing nearby parking is adequate to accommodate the anticipated increase in demand generated by the enlargement; and

WHEREAS, finally, the applicant notes that the restaurant is popular within the community and that the enlargement complies in all respects with the C4-3 bulk regulations; and

WHEREAS, at hearing, the Board questioned the compliance of the proposed signage, egress, seating layouts, and occupant loads; in addition, the Board directed the applicant to refine and further explain its parking analysis, and to submit photographs showing the removal of egress obstructions; and

WHEREAS, in response, the applicant submitted amended plans showing compliance with the C4-3 sign regulations, an additional means of egress in the restaurant, the proposed seating arrangements, and a detailed chart showing the permitted and proposed occupant loads of all floor space within the building; and

WHEREAS, in addition, the applicant submitted a revised parking study and a series of photographs showing the restaurant's clear and unobstructed egress; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated October 21, 1991, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received January 28, 2014'- eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: a maximum of 31,439.07 sq. ft. of floor area (1.88 FAR);

THAT the occupant loads of the building will be in accordance with the BSA-approved plans;

THAT all signage will be in accordance with the C4-3 regulations;

THAT a certificate of occupancy will be obtained by

February 11, 2015;

THAT all conditions from the prior grant will remain in effect, except as otherwise stated herein;

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2014.

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an amendment, and an extension of term for an eating and drinking establishment (Use Group 6), which expired on December 12, 2012; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in the *City Record*, with continued hearings on March 23, 2013, June 11, 2013, September 24, 2013, December 10, 2013, and January 14, 2014, and then to decision on February 11, 2014; and

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

WHEREAS, Community Board 2, Manhattan, recommends denial of the requested extension of term until

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(1) the impacts on conforming uses are mitigated and (2) the noise and vibration from the HVAC and exhaust equipment are addressed and that the term be limited to two years; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, the adjacent neighbor, represented by counsel, provided testimony in opposition to the operation of the restaurant, citing the following primary concerns: (1) the rooftop mechanicals create noise and vibration that can be heard in the adjacent building and were installed contrary to plan and without permits; (2) the kitchen exhaust is contrary to Code and emits excessive sound, vibration, and odors; (3) garbage collection is disruptive as it occurs at late and early hours; (4) the use of the cellar is contrary to the Certificate of Occupancy and egress and ventilation requirements; and (5) the use of upper floors for commercial use is contrary to the terms of the variance; and

WHEREAS, certain other members of the community provided testimony in opposition to the operation of the restaurant, noting that the variance is limited to the cellar, first floor, and rear portion of the second floor, but commercial use also occupies the remainder of the building; and

WHEREAS, the subject site is on the south side of Waverly Place between Sixth Avenue and Washington Square West/MacDougal Street, within an R7-2 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a four-story townhouse building occupied on the first floor and cellar by a Use Group 6A restaurant, Babbo; the occupancy of the front portion of the second floor and the entire third and fourth floors is limited to conforming use; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted an application under ZR § 72-21, to permit the re-establishment of a Use Group 6A eating and drinking establishment, without music or entertainment, located at the cellar level, ground floor, and second floor of the subject premises, and to permit the continuation of a non-conforming accessory business sign; and

WHEREAS, on December 14, 2004, the Board granted an amendment to permit the enlargement of the cellar for use as a wine storage area for the existing restaurant; and

WHEREAS, in response to the neighbor's concerns related to the HVAC units, the applicant agreed to adjust the HVAC equipment mounted on the dunnages of the building's fourth-floor roof, extend the kitchen exhaust up the building, as per new plans filed with and approved by DOB and LPC, and enclose the fan equipment of the kitchen exhaust within an acoustical enclosure; and

WHEREAS, the applicant also states that (1) the installation of all HVAC units has been approved and it is resolving any inconsistencies between the plans and the built conditions with DOB and ECB; (2) new, more effective, and quieter mechanical units have been installed, which include a low noise fan rotor, low speed fan motor, a compressor sound attenuation blanket and new vibration pads between the unit and dunnage for each unit; and (3) its acoustic engineer has

studied the sound of the new system and concludes that the noise levels in the adjacent building are reduced and now match the ambient noise level, thus not exceeding any Noise Code limits; and

WHEREAS, as to the exhaust duct, the applicant states that it submitted DOB and LPC permits for the installation work and notes that the current applications and approvals supersede all prior ones and includes a custom-designed enclosure for the exhaust duct fan apparatus and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, dated September 9, 2013, which permits the changes to the rooftop mechanicals; and

WHEREAS, as to the garbage collection and bottle-crushing, the applicant states that it employs a service that is restricted to pickup after 8:00 a.m. and that it has installed a camera to monitor collections which reflects that collection has occurred after 8:00 a.m. and is therefore in compliance; and

WHEREAS, as to the occupancy of the cellar, the applicant states that it has removed a prep table and oven from the cellar and is in the process of obtaining a permit to remove a sink at which time it will be able to file a revised Certification of Correction and have the cellar use violation closed; and

WHEREAS, as to the use of the upper floors, the applicant represents that the fourth floor apartment is used as a pied a terre for one of the owners and that the second/third floor duplex was under lease until vacated in September 2012; and

WHEREAS, the applicant submitted photographs of the vacant duplex residential unit; and

WHEREAS, the applicant represents that office use has ceased and the duplex apartment is currently listed with a real estate broker to find a new tenant; and

WHEREAS, the Board finds that, in response to the neighbor's concerns, the applicant has undertaken significant improvements to its HVAC and exhaust fan duct systems, completed work while its application was in the hearing public process, and also addressed concerns related to the garbage collection hours and use of the cellar and the upper floors; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports a grant of the requested ten-year extension of term.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution will read: "to extend the term of the variance for ten years from the prior expiration on December 12, 2012 to December 12, 2022; *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received April 19, 2013' – one (1) sheet; and *on further condition*;

THAT the term will expire on December 12, 2022;

THAT a new Certificate of Occupancy be obtained by February 11, 2015;

THAT all rooftop mechanicals and associated sound attenuation measures be installed and maintained pursuant to the BSA-approved plans;

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THAT the rooftop mechanicals and all other use of the building comply with Noise Code regulations;

THAT garbage collection hours are restricted to 8:00 a.m. to 8:00 p.m.;

THAT the use of the cellar must comply with all relevant regulations;

THAT the use of the front portion of the second and the entire third and fourth floors is restricted to residential occupancy;

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

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

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

(DOB Permit No. 102702522)

Adopted by the Board of Standards and Appeals, February 11, 2014.

13-78-BZ

APPLICANT – Sheldon Lobel, P.C., for 2K Properties Inc., owner.

SUBJECT – Application July 23, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a plumbing supply establishment (*Jamaica Plumbing and Heating Supply, Inc.*) which expired on June 27, 2013. R4-1 & R6A/C2-4 zoning districts.

PREMISES AFFECTED – 144-02 Liberty Avenue, east side of Liberty Avenue between Inwood Street and Pinegrove Street, Block 10043, Lot 6, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for decision, hearing closed.

546-82-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pasquale Carpentire, owner; Ganesh Budhu, lessee.

SUBJECT – Application June 20, 2013 – Extension of term of previously granted variance for the continued operation of a non-conforming open public parking lot which expired on June 14, 2013. R7-A zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, bounded by 88th Avenue to its north, 150th Street to its east, 148th Street to its west, 89th Avenue to its south, Block 9693, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs, Inc., owner.

SUBJECT – Application November 7, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 Eating and Drinking establishment (*The Townhouse*) which expired on July 9, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 9, 2003; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 234 East 58th Street, south side of East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

178-99-BZ

APPLICANT – Eric Palatnik, P.C., for Saltru Associates Joint Venture, owner.

SUBJECT – Application November 30, 2012 – Amendment (§§72-01 & 72-22) of a previously granted Variance (§72-21) which permitted an enlargement of an existing non-conforming department store (UG 10A). The amendment seeks to replace an existing 7,502 sq. ft. building on the zoning lot with a new 34,626 sq. ft. building to be occupied by a department store (UG 10A) contrary to §42-12. M3-1 zoning district.

PREMISES AFFECTED – 8973/95 Bay Parkway, 1684 Shore Parkway, south side of Shore Parkway, 47/22' west of Bay Parkway, Block 6491, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application May 17, 2013 – Extension of Term of a previously approved Variance (§72-21) for the construction of an automotive service station (UG 16B) with accessory convenience store which expired on January 28, 2013; Waiver of the rules. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta Lane, Block 7734, Lot 13 & 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

348-12-A & 349-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Starr Avenue Development LLC, owner.

SUBJECT – Application December 28, 2012 – Proposed construction of two one-family dwellings located within the bed of a mapped street, contrary to General City Law, Section 35. R2 zoning district.

PREMISES AFFECTED – 15 & 19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot 67, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated July 11, 2013, acting on Department of Buildings Application Nos. 520112789 and 520112798, read in pertinent part:

Proposed construction located within the bed of a mapped street is contrary to Section 35 of the General City Law (Lot 67 and 68);

Proposed new building has bulk non-compliances resulting from the location of such mapped street (Lot 67); and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on February 11, 2014; and

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

WHEREAS, this is an application to allow the construction of two three-story, one-family residences, with two parking spaces, which will be partially located in the bed of Hartford Avenue, a mapped but unbuild street; and

WHEREAS, the subject site is located on the north side of Starr Avenue, approximately 139.96 feet west of the intersection of Starr Avenue and Oakland Avenue, within an R2 zoning district; and

WHEREAS, the applicant states that the subject zoning lots will be created through the apportionment of existing Lot 67; proposed (new) Lot 67 will be 40 feet in width and 128.12 feet in depth, with a lot area of 5,108 sq. ft.; proposed Lot 68 will be 40 feet in width and 127.7 feet in depth, with a lot area of 5,074 sq. ft.; and

WHEREAS, the applicant states that three additional zoning lots will also be created through the apportionment;

these lots are not subject to the instant application because they are not located within the bed of Hartford Avenue; and
WHEREAS, by letter dated February 22, 2013, the Fire Department states that it has reviewed the proposal and offers no objections; and

WHEREAS, by letter dated February 13, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there is an existing 6-inch diameter private sanitary sewer, and an eight-inch diameter City water main in the bed of Hartford Avenue, starting north of the subject site; and (2) City Drainage Plan No. PRD-1B & 2B, Sheet 10 of 14, dated November of 1968, for the above referenced location calls for a future 10-inch diameter sanitary sewer and a 12-inch storm sewer crossing the above referenced development and flowing towards Starr Avenue and Drainage Plan No. PRD-E, sheet 2 of 3, dated May of 1973, calls for a future 10-inch diameter sanitary sewer and a 12-inch diameter storm sewer, starting northerly of the proposed development and flowing towards Whitewood Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) a 32-foot wide sewer corridor in the bed of Hartford Avenue along Lot 68 for the installation, maintenance, and/or reconstruction of the future 10-inch diameter sanitary sewer and the 12-inch diameter storm sewer; and (2) if a corridor is not possible, the applicant has the option to amend the drainage plan; and

WHEREAS, in response to DEP’s request, by letter dated March 10, 2013, the applicant asserts that the requested easement would eliminate an entire house and essentially result in a taking of the property; and

WHEREAS, the applicant also contends that the owner should not have to bear the expense of having to amend the City’s drainage plan; and

WHEREAS, by letter dated January 2, 2014, DEP states that: (1) the applicant must establish a \$5,000 security deposit along with the application for the proposed amendment to ensure the completion of the necessary amendments to the Drainage Plan for the above referenced location; and (2) after Board approval, the application will be accepted for a sewer connection request for the above referenced location and the House Connection Proposal can be certified with a condition No Certificate of Inspection will be issued until the Drainage Plan is amended; and

WHEREAS, by correspondence dated March 13, 2013, the Department of Transportation (“DOT”) requires that the applicant build a cul de sac at the dead end of Hartford Avenue since it is more than 300 feet to the closet intersection; DOT notes that the cul de sac must comply with American Association of State Highway and Transportation Officials (“AASHTO”) standards; in addition, DOT requests that the drawings for the cul de sac be submitted to DOT for approval; and

WHEREAS, by letter dated March 13, 2013, DOT states that according to the Staten Island Borough President’s Topographical Bureau, Hartford Avenue between Hartford Avenue between Starr Avenue and Whitewood Avenue is a mapped street to a 50-foot width on the Final City Map; and

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WHEREAS, DOT notes that the City does not have title to the mapped street, but there is a Corporation Counsel Opinion of Dedication, for Hartford Avenue from a point approximately 126 feet north of Starr Avenue to Whitewood Avenue to 44 to 45 feet as in use dated August 11, 1992;

WHEREAS, by letter dated October 22, 2013, in response to DOT's request, the applicant provided two alternate site plans; the first site plan depicts the cul de sac requested by DOT in its March 13, 2013 letter; the applicant states that to provide the requested cul de sac would result in unbuildable lots; the second plan depicts a hammerhead turnaround, which the applicant states is also impractical as it would result in a significant paved area that would greatly diminish the usable rear yard of the proposed buildings, as well as impact the existing home located on Lot 153; and

WHEREAS, the Board disagrees with DOT that the cul de sac is necessary for the following reasons: (1) the existing condition along Hartford Avenue will remain unchanged as a result of the proposed construction; (2) the proposed homes will have legal access from Starr Avenue; and (3) both a cul de sac and a hammerhead turnaround would significantly affect the usability of the homes' yards; and

WHEREAS, further, the Board notes that DOT has not represented that construction within the bed of Hartford Avenue would either conflict or interfere with the its Capital Improvement Program; and

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

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

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

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

Therefore it is Resolved, that the Board modifies the decisions of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application Nos. 520112789 and 520112798 by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuild street pursuant to Section 72-01(g) of the Zoning

Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received January 21, 2014" – one (1) sheet; and *on further condition*:

THAT DOB will review and approve the plans as though the site (Block 298, Tentative Lots 67 and 68) were two zoning lots;

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

THAT the applicant will file for the DEP amended drainage plan prior to obtaining a permit at DOB;

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

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

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

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

THAT DOB will not issue a Certificate of Occupancy until the Department of Environmental Protection has signed off on the amended drainage plan.

Adopted by the Board of Standards and Appeals on February 11, 2014.

191-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for McAllister Maritime Holdings, LLC, owner.

SUBJECT – Application June 28, 2013 – Proposed construction of a three-story office building within the bed of a mapped street, pursuant to Article 3 of General City Law 35. M3-1 zoning district.

PREMISES AFFECTED – 3161 Richmond Terrace, north side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 13, 2013, acting on Department of Buildings ("DOB") Application No. 520141613 reads in pertinent part:

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Proposed construction of a three story office building and 24 parking spaces located within the bed of a mapped street is contrary to General City Law Section 35; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on February 11, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, this is an application to allow the construction of a three-story office building with an accessory parking lot that will be partially located in the bed of Richmond Terrace, a mapped but unbuilt street; and

WHEREAS, the subject site is located on the north side of Richmond Terrace across from the intersection of Richmond Terrace and Grandview Avenue, within an M3-1 zoning district; and

WHEREAS, the applicant states that the proposed building will abut an existing one-story building in the southwest corner of the subject site, and that it will have approximately 17,321 sq. ft. of floor area (0.05 FAR), which will increase the total floor area on the zoning lot to approximately 33,506 sq. ft. (0.09 FAR); a total of 68 accessory parking spaces will be provided, 24 of which will be within the bed of Richmond Terrace; and

WHEREAS, the applicant notes that, at the request of the New York State Department of Environmental Conservation, it modified its site plan to shift accessory parking spaces further into the bed of Richmond Terrace; and

WHEREAS, by letter dated July 30, 2013, the Department of Environmental Protection ("DEP") states that:

(1) there is an existing 20-inch diameter water main, and an existing 3'-4" by 3'-3" combined sewer, and a 24-inch diameter interceptor sewer in the bed of Richmond Terrace, starting north of the intersection with Grandview Avenue; and
(2) City Drainage Plan No. PRD-1C, sheet 3 of 4, dated June 1973, calls for a future ten-inch diameter sanitary sewer and a 60-inch storm sewer to be installed in Richmond Terrace north of its intersection with Grandview Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the existing 20-inch diameter water main, the existing 24-inch diameter interceptor sewer, and the 3'-4" by 3'-3" combined sewer; (2) the distance from the southerly lot line of Lot 15 to the existing sewers and water main in the bed of Richmond Terrace and the width of the widening portion; and

WHEREAS, based on such survey/plan, DEP states that it will determine what portion of Richmond Terrace will be required for the installation, maintenance and/or reconstruction of the existing water main and sewer; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey which shows the total width (100

feet) of mapped Richmond Terrace north of its intersection with Grandview Avenue and the 41.21-ft. of the width of the traveled portion of Richmond Terrace at its narrowest point, which will be available for the maintenance and/or reconstruction of the existing sewers, water main, and future sewers; and

WHEREAS, by letter dated December 10, 2013, DEP states that it has reviewed the information and has no objections; and

WHEREAS, by letter dated November 13, 2013, DOT states that, according to the Staten Island Borough President's Topographical Bureau, Richmond Terrace from South Avenue to Mersereau Avenue is mapped at a 100-ft. width on the City Map and has an opinion of dedication for 41.25 feet to 80 feet, as in use on June 6, 1945; and

WHEREAS, Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, in addition, DOT states that the improvement of Richmond Terrace at this location is not presently included in DOT's Capital Improvement Program; and

WHEREAS, by letter dated July 17, 2013, the Fire Department states that it has reviewed the proposal and offers no objections; and

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

Therefore it is Resolved, that the Board modifies the decision of the Staten Island Borough Commissioner, dated on December 13, 2013, acting on Department of Buildings Application No. 520141613 by the power vested in it by Section 35 of the General City Law, *on condition* that construction will substantially conform to the drawing filed with the application marked "Received January 28, 2014" two (2) sheets; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals on February 11, 2014.

287-13-A & 288-13-A

APPLICANT – Rothkrug Rothkrug & Spec tor LLP, for BIRB Realty Inc., owner.

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SUBJECT – Application October 15, 2013 – Proposed construction of a building that does not front on a legally mapped street, contrary to General City Law Section 36. R3X SRD district.

PREMISES AFFECTED – 525 & 529 Durant Avenue, north side of Durant Avenue, 104-13 ft. west of intersection of Durant Avenue and Finlay Avenue, Block 5120, Lot 64, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated September 13, 2013, acting on Department of Buildings (“DOB”) Application Nos. 520160441 and 520160432, read in pertinent part:

The proposed two family dwelling, which does not front on a legally mapped street, is contrary to Article 111, Section 36 of the General City Law; and

WHEREAS, this is an application to allow the construction of two, two-family homes not fronting a legally mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on February 11, 2014; and

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

WHEREAS, the subject site comprises two proposed zoning and tax lots (Tentative Tax Lots 64 and 66) located on the north side of Durant Avenue, approximately 104 feet west of the intersection of Durant Avenue and Fieldway Avenue, within an R3X zoning district, within the Special South Richmond Development District; and

WHEREAS, the applicant notes that a third two-family home, to be located on a proposed third lot (Tax Lot 62) is not part of this application, because it is proposed to front on Durant Avenue, which is a legally mapped street; and

WHEREAS, the applicant also notes that a separate application will be filed with the Department of City Planning seeking a text amendment to permit modification of the designated open space at the site; and

WHEREAS, the applicant represents that the proposed buildings, which will be fully-sprinklered, will front only on an access road that will be paved to a width of 34 feet and will extend from the boundary of Durant Avenue to the western boundary of Lot 66; the road will extend for approximately 100 feet, and it will be maintained by the homeowners of the affected lots; and

WHEREAS, initially, the applicant proposed a minimum paved width of 30 feet; however, based on discussions with the Fire Department, as noted below, the proposal was revised to provide a minimum paved width of 34 feet; and

WHEREAS, by letter dated December 6, 2013, the Fire Department informed the Board of its objections to the proposal; specifically, the Fire Department stated that because the development includes six dwelling units, it is contrary to Fire Code § FC503.2.1, which generally requires a minimum access road width of 38 feet, but allows for a minimum access road width of 30 feet where, among other things, not more than five dwelling units will be accessed by the road; and

WHEREAS, in response to the concerns of the Fire Department, by letter dated January 28, 2014, the applicant submitted a revised proposal, which increased the width of the extension of Durant Avenue to 34 feet, and which indicated that “No Parking” signs will be posted to establish a no parking zone for the entire extension of Durant Avenue; and

WHEREAS, by letter dated February 3, 2014, the Fire Department informed the Board that it no longer objected to the proposal, provided that: (1) the access road is constructed and maintained with a minimum paved width of 34 feet, measured curb to curb; (2) “No Parking” signs are installed on both sides of the access road for its entire length, establishing a no parking zone; (3) all buildings fronting on the access road comply with Fire Code § FC502.1; (4) the applicant submits and obtains from the Fire Department a formal variance for the proposal; and (5) the two buildings fronting on the access road are fully-sprinklered; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions; and

Therefore it is Resolved, that the decisions of the Staten Island Borough Commissioner, dated September 13, 2013, acting on Department of Buildings Application Nos. 520160441 and 520160432, are modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 4, 2014” one (1) sheet; and *on further condition*:

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 site and roadway will conform to the BSA-approved plans;

THAT the roadway will be maintained with a minimum paved width of 34 feet, measured curb to curb;

THAT “No Parking” signs will be installed on both sides of the roadway, establishing a no parking zone for its entire length;

THAT a formal variance will be obtained from the Fire Department prior to the issuance of DOB permits;

THAT both buildings fronting on the roadway will comply with Fire Code § FC502.1 and be fully sprinklered;

THAT all required approvals will be obtained from the

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Department of City Planning prior to the issuance of DOB permits;

THAT a Homeowners' Association will be created to maintain the street;

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

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

Adopted by the Board of Standards and Appeals February 11, 2014.

80-11-A, 84-11-A & 85-11-A & 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of Buildings' to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for decision, hearing closed.

156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31 Street Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C6-4/HY zoning district.

PREMISES AFFECTED – 450 West 31st Street, West 31st Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #10M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

ZONING CALENDAR

43-12-BZ

CEQR #12-BSA-080M

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Borough Commissioner of the Department of Buildings, dated February 9, 2012 and January 6, 2014, acting on Department of Buildings Application No. 101569269, read, in pertinent part:

ZR 42-00 – Proposed Residential Use (Use Group 2) contrary to ZR 42-00 and not permitted in an M1-5B district.

ZR 42-14(d)(2)(b) – Proposed Use Group 6 Commercial use below the second story level of the building is not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an 11-story mixed residential and commercial building (Use Groups 2 and

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6), contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012 and January 14, 2014, and then to decision on February 11, 2014; and

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

WHEREAS, Community Board 2, Manhattan, recommended approval of the original iteration of the proposal and its Landmarks Committee recommends approval of the Landmarks application, which reflects the current variance proposal; and

WHEREAS, the subject site is a through lot with frontage on Great Jones Street and Bond Street, between Lafayette Street and the Bowery, within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site has 25'-8" of frontage along Great Jones Street and along Bond Street, a depth of 200'-2", and a lot area of 5,134 sq. ft.; and

WHEREAS, the site is occupied by a vacant 13-story superstructure set back 19 feet from the Great Jones Street frontage (the "Hotel Building") and a partially demolished two-story unoccupied building fronting on Bond Street; and

WHEREAS, the applicant represents that the 13-story superstructure was constructed pursuant to lawfully-issued permits which were issued prior to the May 12, 2008 designation of the NoHo Historic District Extension, with plans to be occupied by a restaurant on the ground floor and a hotel above; and

WHEREAS, the Hotel Building was to include a 13-story portion on Great Jones Street (with a height of 173'-4" and 5.0 FAR), set back 19 feet from the Great Jones Street frontage, and a one-story base extending towards Bond Street, with a plaza between it and the Bond Street frontage, with a depth of 30 feet; and

WHEREAS, the permits for the building facades were issued after the historic designation and, thus were subject to LPC approval, which was obtained in 2009; and

WHEREAS, the applicant states that construction was halted in 2009 and it seeks to modify the existing superstructure to accommodate residential, rather than hotel use, as the hotel use is not viable; and

WHEREAS, the applicant initially sought to retain the 13-story height (of 149'-11" with a mechanical floor up to a height of 163'-4"), to increase the floor area to 5.99 FAR, and to not return to the Landmarks Preservation Commission (LPC) for approval of any changes; and

WHEREAS, the Board directed the applicant to reduce the height and the 5.99 FAR request to be consistent with the 5.0 FAR permitted in the district for a conforming use and noted that LPC approval is required; and

WHEREAS, accordingly, the applicant proposed a building built to the Great Jones Street streetline, which would fill in the open space between the Hotel Building and the

street line, with 5.0 FAR, a six-story streetwall with a setback of 19'-3", then at a height of 117 feet a setback of 23'-7" before reaching a height of 128 feet on Great Jones Street; additionally, the applicant also proposed a four-story townhouse on Bond Street; and

WHEREAS, the applicant represents that it returned to LPC with the noted proposal and LPC required certain design changes, which resulted in the current proposal that includes (1) replacing the Bond Street townhouse with a residential entry and screen wall, (2) increasing the height of the Great Jones Street streetwall from 73 feet to 83'-11", (3) increasing the roof height by approximately 2'-0" to 130'-0" and the bulkhead by approximately 3'-6", (4) eliminating the 11th floor setback on Great Jones Street, (5) shifting the townhouse bulk onto the tower, and (6) increasing the depth of the Bond Street building by approximately 10'-0"; and

WHEREAS, the applicant represents that LPC's design changes reflect its interest in matching the heights of adjacent buildings without setback and its belief that there is not a context for a Bond Street townhouse; and

WHEREAS, the current proposal is for a building with a floor area of 25,533 sq. ft. (4.97 FAR), which includes an 11-story building with six residential units on the first through 11th floors and commercial use on the cellar and ground floor levels fronting on Great Jones Street; and

WHEREAS, the applicant represents that the proposed 11-story mixed residential (Use Group 2) and commercial (Use Group 6) building, will have a total floor area of 25,533 sq. ft. (4.97 FAR), a residential floor area of 24,782 sq. ft. (4.82 FAR), a commercial floor area of 751 sq. ft. (0.15 FAR), a street wall height of 83'-11" at the seventh story, a building height of 130 feet (excluding the bulkhead), and an open space at the second story; the applicant notes that the cellar will include commercial space, mechanical rooms, and accessory storage for the residences; the Great Jones Street first story will be occupied by commercial space and the Bond Street first story will be occupied by the residential entrance; and the second through 11th stories will be occupied by a total of six dwelling units; and

WHEREAS, the building entrance will be through Bond Street, which includes a screen and rooftop open space above the one-story entrance; and

WHEREAS, because Use Group 2 is not permitted and Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district, the applicant seeks use variances; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the history of development on the site; and (2) the narrow through lot condition; and

WHEREAS, the applicant represents that in 1820, a three-story rowhouse was built at 22 Bond Street with a stable in the back fronting on Great Jones Street, which was the model for other homes on the block; and

WHEREAS, the applicant represents that at the end of the 19th Century, the Great Jones Street stable was replaced

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with a five-story building occupied by manufacturing use; the three upper stories were removed in 1939 when an auto repair business took over the site and the Bond Street building was used, unchanged, by various businesses; and

WHEREAS, finally, the applicant represents that in the 1990s, the Bond Street building was partially demolished and renovated and the two-story Great Jones Street building was demolished; and

WHEREAS, the applicant states that since the time the larger former Great Jones Street building was partially demolished in the late 1930s and the Bond Street building was retained, there were limited development options for the site; and

WHEREAS, the applicant asserts that the limited usefulness of the site during the past 200 years supports the conclusion that there is hardship inherent in the site; and

WHEREAS, the applicant states that the site's configuration, with a width of 25'-8" and a depth of approximately 200 feet is a historic condition, which is unique in the area where other such lots, first created in the early 19th Century, have been subdivided, which allowed for separate development on Great Jones Street and Bond Street; and

WHEREAS, the applicant represents that the narrow through lot configuration has existed for more than 200 years; and

WHEREAS, the applicant states that the disproportionate narrowness in relation to depth leads to significant building inefficiencies due to the fact that the options for development are either to construct two essentially separate buildings with frontage on each of the streets or to construct one building at one of the frontages or set back from the street, which would have considerable depth but access to windows only on the narrow north and south facades; and

WHEREAS, the applicant has identified \$3 million in construction premiums associated with constructing on a site of this configuration when compared to a more conventional 50'-0" by 100'-0" lot, due primarily to the significant extent of surface area of the façade and requirement for redundancies such as stairs and elevators and other infrastructure; and

WHEREAS, the applicant asserts that the unique configuration, namely its depth in relation to its street frontage, also leads to constraints related to access for a conforming use; and

WHEREAS, the applicant asserts that the irregular configuration of the site has led to the retention of the small building on Bond Street, which limited the ability to maximize opportunity to build a larger commercial building in the late 1800s on Great Jones Street; and

WHEREAS, as to uniqueness, the applicant analyzed the surrounding area and found that the site is the only such narrow through lot in the M1-5B zoning district north of Houston Street and, and only the second in the surrounding forty blocks, bounded by Houston Street, First Avenue, St. Marks Place, and LaGuardia Place with such configuration; and

WHEREAS, the Board agrees that the noted unique physical conditions, when considered in the aggregate, create

unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will realize a reasonable return; and

WHEREAS, in particular, the applicant initially examined the economic feasibility of: (1) an as-of-right hotel and restaurant scenario; (2) an as-of-right hotel and restaurant on a lot that is 50'-0" by 100'-0" and (3) the residential building with an 11-story tower and four-story townhouse; and

WHEREAS, the applicant concluded that only the residential proposal and as-of-right building on the 50'-0" by 100'-0" lot would realize a reasonable rate of return; thus, the applicant represents that the residential proposal is the only economically viable scenario on the 25'-8" by 200'-2" lot; and

WHEREAS, after the applicant had completed its process at LPC including the redesign of its building to obtain a Certificate of Appropriateness, the Board directed the applicant to re-examine the financial analysis in light of the changes associated with the LPC-approved design which eliminated the townhouse and added bulk to the tower; and

WHEREAS, the applicant submitted a supplemental financial analysis which reflects that the rate of return for the current proposal is consistent with that of the prior proposal; thus, the financial feasibility is not implicated by the design change; and

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

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

WHEREAS, as to use, the applicant states that the immediate area is characterized by a mix of medium-density residential and commercial uses, with some remaining manufacturing/industrial uses and that the introduction of six residential units and 751 sq. ft. of first floor commercial space (and 3,494 sq. ft. in the cellar) will not disrupt the neighborhood character; and

WHEREAS, the applicant states that many of the buildings on both streets are occupied, at least in part by commercial uses and at least 28 out of the 38 buildings fronting on Great Jones Street or Bond Street have some residential occupants either as Joint Living Work Quarters for Artists or pursuant to use variances; and

WHEREAS, the applicant notes that the subject M1-5B zoning district is a two-block wide strip centered along Lafayette Street from Astor Place to Bleecker and Houston streets; and South of Houston Street the district widens to

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the west where it abuts an M1-5A district at Mercer Street and a block east of the site is a C6-1 district at the Bowery, a block to the south and west are C6-2 zoning district; and

WHEREAS, the applicant asserts that all of the C6 districts permit residential, commercial, and community facility uses as-of-right; and

WHEREAS, the applicant asserts that the proposed use is more compatible with the surrounding area than the as-of-right hotel use; and

WHEREAS, as to bulk, the applicant notes that the proposed 4.97 FAR complies with the bulk regulations for a conforming use in the M1-5B zoning district; and

WHEREAS, the applicant states that the Bond Street frontage is between a six-story building to the east and a seven-story building to the west and the Great Jones Street frontage is between a six-story building to the east and a vacant lot, with an approved variance for a seven-story mixed use building to the west (BSA Cal. No. 64-06-BZ); and

WHEREAS, the applicant states that the north side of Great Jones Street is occupied by a parking lot and a fire station and the south side of Great Jones Street is characterized by three- to seven-story, mostly masonry buildings; Bond Street includes a similar mix of buildings; and

WHEREAS, the applicant states that the proposed building will reestablish a consistent street wall on Great Jones Street with the addition of a six-story extension to fill the 19-ft. setback of the existing superstructure; and

WHEREAS, the applicant represents that, per LPC's request, the streetwall addition will match the adjacent building heights; and

WHEREAS, the applicant also represents that it will install a mural on its highly-visible western wall; and

WHEREAS, the applicant asserts that the proposed matching streetwall of 83'-11" and reduction in the overall height of the building from 149'-11" (13 stories) to 130'-0" (11 stories) is significantly more compatible with the surrounding area than the Hotel Building, which sets back from the street and is not harmonious with the surrounding built context; and

WHEREAS, the applicant also submitted a height map which reflects that the majority of buildings on the subject block have heights of between five and eight stories with one other 11 or more story building with frontage on Bond Street; and

WHEREAS, additionally, the applicant notes that the proposed building height is approximately 30 feet less, including mechanicals, than that of the existing as of right Hotel Building; and

WHEREAS, the Board notes that its initial recommendation was for a building that included a second setback at 117 feet and a total height of 128 feet, which it found to be more consistent with residential contextual building envelopes as well as the building envelopes approved for other recent variances on Bond Street and Lafayette Street; and

WHEREAS, the Board initially questioned whether a height of 130 feet with such great visibility—and particularly without the second setback—would be appropriate in the surrounding context; and

WHEREAS, however, the Board recognizes that LPC supports the proposed 130-ft. height in the context of a significant improvement on the existing Hotel Building and, thus, concludes that only under those circumstances does it accept the 130-ft. height; and

WHEREAS, LPC approved of the proposed building by Certificate of Appropriateness dated December 9, 2013; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units and ground floor commercial use will not impact nearby conforming uses; and

WHEREAS, the Board notes that some ground floor Use Group 6 is contemplated in the M1-5B district, as evidenced by the existence of ZR § 74-781, a City Planning Commission special permit, which allows modification of the use regulations set forth in ZR § 42-14; and

WHEREAS, the applicant proposes that the entrance to the commercial space is on the Great Jones Street frontage, which has a context for such first floor use; and

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

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

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12-BSA-080M, dated February 10, 2014; and

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

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

WHEREAS, DEP reviewed and accepted the March 2013 Site Investigation Work Plan, proposed Phase II air testing protocol, and the April 2013 site-specific Health and Safety Plan; and

WHEREAS, DEP stated that the Phase II air testing can be conducted after construction of the proposed project; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district within the NoHo Historic District Extension, the construction of an 11-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor retail, contrary to ZR §§ 42-10 and 42-14, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 6, 2014"- (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a total floor area of 25,533 sq. ft. (4.97 FAR), a residential floor area of 24,782 sq. ft. (4.82 FAR), a commercial floor area of 751 sq. ft. (0.15 FAR) on the first floor, a maximum of 11 stories on Great Jones Street, a street wall height of 83'-11" before a setback of 15'-0", a total height of 130'-0" (excluding the bulkhead) and a one-story with additional rooftop screenwall on Bond Street, as reflected on the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Phase II air testing report and other remedial actions or measures required based on the testing results;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2014.

212-13-BZ

APPLICANT – Eric Palatnik, P.C., for Andrey Novikov, owner.

SUBJECT – Application July 12, 2013 – 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) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 151 Coleridge Street, Coleridge Street between Oriental Boulevard and Hampton Avenue, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the New York City Department of Buildings ("DOB"), dated June 17, 2013, acting on DOB Application No. 320513495, reads in pertinent part:

1. Proposed floor area is contrary to ZR 23-141(b)
2. Proposed open space is contrary to ZR 23-141(b)
3. Proposed lot coverage is contrary to ZR 23-141(b)
4. Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, with a continued hearing on January 28, 2014, and then to decision on February 11, 2014; and

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

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

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

WHEREAS, the site has a total lot area of 6,000 sq. ft. and is occupied by a single-family home with a floor area of 3,890.9 sq. ft. (0.65 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 3,890.9 sq. ft. (0.65 FAR) to 5,905 sq. ft. (0.98 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 3,600 sq. ft. (0.6 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 78.8 percent to 59.3 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 21.2 percent to 40.7 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant also seeks to increase its rear yard depth from 11'-2" to 23'-0"; thus, although the proposal reflects a decrease in the degree of non-compliance, because a minimum rear yard depth of 30'-0" is required, a waiver is necessary; and

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

WHEREAS, in particular, the applicant represents that the proposed 0.98 FAR is consistent with the bulk in the surrounding area and submitted an analysis showing that there are 12 homes within a 400-foot radius of the site with an FAR of 0.8 or greater; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 25, 2013 – six (6) sheets and "January 14, 2014"- (5) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,905 sq. ft. (0.98 FAR),

a minimum open space of 59.3 percent, a maximum lot coverage of 40.7, a minimum rear yard depth of 23'-0", and side yards with minimum widths of 8'-5" and 11'-7", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2014.

245-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Gorelik, owner.

SUBJECT – Application August 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47). R4 zoning district.

PREMISES AFFECTED – 2660 East 27th Street, between Voorhies Avenue and Avenue Z, Block 7471, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings ("DOB"), dated July 22, 2013, acting on DOB Application No. 320784790, reads in pertinent part:

1. Proposed floor area is contrary to ZR 23-141(a)
2. Proposed open space is contrary to ZR 23-141(a)
3. Proposed lot coverage is contrary to ZR 23-141
4. Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio

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("FAR"), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on January 14, 2014, after due notice by publication in *The City Record*, and then to decision on February 11, 2014; and

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

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

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue Z and Voorhies Avenue, within an R4 zoning district; and

WHEREAS, the site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 2,791 sq. ft. (0.7 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 2,791 sq. ft. (0.7 FAR) to 3,401.5 sq. ft. (0.85 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.75 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 63 percent to 54.5 percent; the minimum required open space is 55 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 37 percent to 45.5 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 29'-2" to 20'-0"; a minimum rear yard depth of 30'-0" is required; and

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

WHEREAS, in particular, the applicant represents that the proposed 0.85 FAR is consistent with the bulk in the surrounding area and submitted an analysis indicating that there are 38 homes within a 400-foot radius of the site with an FAR of 1.0 or greater; and

WHEREAS, at hearing, the Board directed the applicant to demonstrate the proposal's compliance with the landscaping requirements of the Zoning Resolution; and

WHEREAS, in response, the applicant submitted amended plans showing the required landscaping; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 28, 2014"- eight (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,401.5 sq. ft. (0.85 FAR), a minimum open space of 54.5 percent, a maximum lot coverage of 45.5, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 5'-0" and 9'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 11, 2014.

62-12-BZ

APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of commercial building, contrary to use regulations (§22-00). R7-1 zoning district. PREMISES AFFECTED – 614/618 Morris Avenue, northeastern corner of Morris Avenue and E 151th Street, Block 2411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for adjourned hearing.

299-12-BZ

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial

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building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

88-13-BZ

APPLICANT – Lawrence M. Gerson, Esq., for Allied Austin LLC, owner; American United Company, LLC, lessee.

SUBJECT – Application March 14, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Title Boxing Club*) within an existing building. C2-3/R5D zoning district.

PREMISES AFFECTED – 69-40 Austin Street, south side of Austin Street, 299’ east of intersection with 69th Avenue, Block 3234, Lot 150, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 4, 2014, at 10 A.M., for decision, hearing closed.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side

of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for continued hearing.

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289-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new, 304,000 s.f. ambulatory care facility on the campus of New York Methodist Hospital, contrary to floor area (§§24-11, 24-17 and 77-02), lot coverage (§24-11), rear yard (§24-382), height and setback (§24-522), rear yard setback (§24-552), and sign (§22-321) regulations. R6, C1-3/R6, and R6B zoning district.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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32-14-A

256 Forest Avenue, Southwest corner of intersection of Forest Avenue and Elizabeth Grove Road, Block 1384, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Proposed construction of a of a retail /warehouse building located partially within the bed of a unmapped street contrary to Article 3 , Section 35 of the General City Law and waiver of bulk non -compliances under 72-01-(g). M-2-1 Zoning District . M2-1 district.

33-14-A

902 Quentin Road, Southeast corner of intersection of Quentin Road and East 9th Street, Block 6666, Lot(s) 1, Borough of **Brooklyn, Community Board: 15**. Appeal challenging a Department of Building's Determination that the provisions of §113-11 require the application of an equivalent residential FAR for the proposed community facility uses in a C4-2 zoning district . C8-2 (OP) . C4-2 (OP) Zoning District . C8-2/C4-2(OP) district.

34-14-BZ

2131 Hylan Boulevard, N/S Hylan Boulevard, Distance 0' 0" of the corner formed by the intersection of Hylan Boulevard and Bedford Avenue, Block 3589, Lot(s) 63, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical culture (Club Metro USA) establishment within an existing building. C8-1 and R3X zoning district. C8-1/R3X district.

35-14-BZ

40-06 Astoria Boulevard, Astoria Boulevard South 28.0 feet east of the intersection of Steinway Street and Astoria Boulevard, Block 686, Lot(s) 12, Borough of **Queens, Community Board: 1**. Special Permit (§73-36) to permit the operation a physical culture within the existing building. C4-2A zoning district. C4-2A district.

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

CALENDAR

MARCH 11, 2014, 10:00 A.M.

ZONING CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 11, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance for the continued operation of a UG16 auto repair shop with sales, exchange of vehicles and products which expired on June 8, 2010; Waiver of the Rules. C2-2(R6B) & R-4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, south side of Northern Boulevard, 350 East of intersection of Northern Boulevard, and 206th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to Obtain a Certificate of Occupancy of a previously granted Variance for the continued operation of a UG6 Eating and Drinking (*McDonald's*) in a residential use district which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184' east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEALS CALENDAR

215-13-A

APPLICANT – Anthony A. Lenza, owner

SUBJECT – Application July 16, 2013 – Appeal challenging DOB's denial of the exclusion of floor area under ZR 12-10 (12) (ii) exterior wall thickness. R1-1 Zoning District.

PREMISES AFFECTED – 300 Four Corners Road, Block 894, Lot 235, Borough of Staten Island.

COMMUNITY BOARD #2SI

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an Auto Laundry (UG 16B) contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

246-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit enlargement of an existing ambulatory diagnostic treatment health facility (UG4) that exceeds maximum permitted floor area per ZR 24-11 and does not provide required rear yard per ZR 24-36. R6B and C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

276-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Adams Tower Limited Partnership, owner; Fastbreak, owner.

SUBJECT – Application September 27, 2013 – Special Permit (§73-36) to permit physical culture establishment (*Fastbreak*) on the ground floor, cellar & sub-cellar. C1-9 zoning district.

PREMISES AFFECTED – 1629 First Avenue aka 1617 First Avenue and 341 East 84th Street, west side First Avenue between East 84th & East 85th Street, Block 1547, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

290-13-BZ

APPLICANT – Herrick, Feinstein LLP, by Arthur Huh, for Church Avenue Development LLC, owner; New Fitness Holdings LLC, lessee.

SUBJECT – Application October 21, 2013 – Special Permit (§73-36) to allow for a physical culture establishment (*Retro Fitness*) located on the second-floor level of a four-story building. C4-4A zoning district.

PREMISES AFFECTED – 2244 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

306-13-BZ

APPLICANT – Lewis E. Garfinkel for Howard Berglas, owner.

SUBJECT – Application November 20, 2013 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single-family home which is contrary to floor area, lot coverage and open space (23-141); and less than the required rear yard (23-47). R3-2 zoning district.

PREMISES AFFECTED – 3766 Bedford Avenue, west side of Bedford Avenue, 350' south of corner of Bedford Avenue and Avenue P, Block 6787, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 25, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

16-93-BZ

APPLICANT – Carl A. Sulfaro, for 110 Christopher Street, LLC, owner.

SUBJECT – Application November 15, 2013 – Extension of Term (§11-411) of a previously approved variance (§72-21) which permitted retail (UG 6) in the cellar of an existing five-story and multiple dwelling, which expires on February 23, 2014. R6 zoning district.

PREMISES AFFECTED – 110 Christopher Street, south side of Christopher street 192'-6.26 West of Bleeker Street, Block 588, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is for a reopening and an extension of term for a variance, which expired on February 24, 2014; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

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

WHEREAS, the subject site is located on the south side of Christopher Street between Bedford Street and Bleeker Street, within an R6 zoning district; and

WHEREAS, on February 24, 1994, under the subject calendar, the Board granted an application to permit, in an R6 zoning district, the reestablishment of an expired variance, originally granted under BSA Cal. No. 50-60-BZ, which permitted the use of the cellar space for three small offices; and

WHEREAS, the term of the grant was extended on May 25, 2004, to expire on February 24, 2014; on that same date, the grant was also amended to permit the conversion of the

cellar space from offices to a custom dressmaking and sales shop; and

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

WHEREAS, based on its review of the record, the Board finds that the proposed extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals, *reopens* and *amends* the resolution, dated February 24, 1994, so that as amended the resolution reads: "to permit an extension of the term of the variance for a period of ten (10) years from February 25, 2014, to expire on February 25, 2024; *on condition* that the premises will be maintained in substantial compliance with the BSA-approved drawings; and *on further condition*;

THAT the grant will expire on February 25, 2024;

THAT the above conditions and all conditions from prior resolutions required to be on the certificate of occupancy will appear on the new certificate of occupancy;

THAT egress requirements will be approved by the Department of Buildings;

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

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

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

(DOB Application No. 103579487)

Adopted by the Board of Standards and Appeals, February 25, 2014.

20-02-BZ

APPLICANT – Law office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co. LLC, owner; TSI East 23, LLC dba New York Sports Club, lessee.

SUBJECT – Application September 20, 2013 – Extension of term of a special permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) in a five story mixed use loft building, which expired on August 21, 2013. C6-4 zoning district.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue south and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

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THE RESOLUTION –

WHEREAS, this is an application for a reopening of a previously granted special permit for a physical culture establishment (“PCE”) and an extension of term, which expired on August 21, 2013; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

WHEREAS, the PCE is located in a mixed commercial and residential building on the northeast corner of Park Avenue South and East 23rd Street within a C6-4A zoning district; and

WHEREAS, the site is located in portions of the cellar, first floor, and second floor of the five-story building; and

WHEREAS, the PCE has a total floor space of 24,496 sq. ft.; 3,250 sq. ft. of floor space on the cellar level, 5,900 sq. ft. of floor area on the first floor, and 15,076 sq. ft. of floor area on the second floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 18, 1997 when, under BSA Cal. No. 160-95-BZ, the Board permitted the legalization of an existing PCE in the subject building for a term of ten years; and

WHEREAS, on June 18, 2002, under the subject calendar number, the Board approved the expansion of the PCE onto the second floor; and

WHEREAS, the Board notes that numerous building residents testified at the August 21, 2007 hearing, raising concerns with excessive noise and vibrations caused by the operation of the PCE; accordingly, on August 21, 2007, the special permit was extended for a term of one year, which expired on August 21, 2008; and

WHEREAS, the applicant represents that, subsequent to the August 21, 2007 hearing, the concerns were addressed and, on November 18, 2008, the Board granted a five-year extension of term, to expire on August 21, 2013; and

WHEREAS, the applicant notes that the PCE continues to be operated as New York Sports Club; and

WHEREAS, the applicant now seeks a ten-year extension of term; and

WHEREAS, at hearing, the Board directed the applicant to notify the residents of the building and submit proof of such notification; and

WHEREAS, in response, the applicant provided proof that the residents of the building had been notified; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on June 18, 2002, so that as amended this portion of the resolution shall read: “to extend the term for ten years from

August 21, 2013, to expire on August 21, 2023, *on condition* that the use and operation of the site will substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant will expire on August 21, 2023;

THAT the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 11:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2014.

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III, owners.

SUBJECT – Application October 28, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a 12-story mixed-use building and a 6-story community facility dormitory and faculty housing building (*CUNY Graduate Center*), contrary to use and bulk regulations. The amendment seeks the elimination of the cellar and other design changes to the Dormitory Building, M1-4/R6A (LIC) zoning district.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east, Block 28, Lot 12, 15, 17, 18, 21, 121, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a site partially in an M1-4 zoning district and partially in an M1-4/R6A district within the Special Long Island City Mixed-Use District, the construction of a 12-story mixed residential and commercial building (the “Mixed-Use Building”) and a six-story student dormitory building (the “Dormitory Building”) for the City University of New York (“CUNY”) Graduate Center, contrary to use and bulk

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regulations; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

WHEREAS, the subject site is bounded by Fifth Street to the west, 46th Road to the north, and 47th Avenue to the south, with a total lot area of 66,838 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since September 23, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of a 12-story mixed residential and commercial building and a six-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage, contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, and 23-711; and

WHEREAS, the Board issued a letter of substantial compliance on June 10, 2009, to permit certain modifications to the approved plans, and to acknowledge that although the project was originally filed at the Department of Buildings (“DOB”) under a single permit application (NB # 402661945), the project was subsequently filed as two separate projects, with the Mixed-Use Building retaining the original application number, and the Dormitory Building filed under new NB # 420006111; and

WHEREAS, the Board issued a second letter of substantial compliance on December 8, 2009, stating that the Board has no objection to the issuance of a temporary and permanent certificate of occupancy for the Mixed-Use Building prior to the construction of the Dormitory Building and the connection between the buildings; and

WHEREAS, the applicant states that the issuance of the December 8, 2009 letter was based on the anticipated occupancy of the Dormitory Building by the CUNY Graduate Center; however, subsequent to the issuance of the letter, the CUNY Graduate Center withdrew from the project; and

WHEREAS, on February 15, 2011, the Board approved an amendment to clarify that either the Mixed-Use Building or the Dormitory Building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; and

WHEREAS, the applicant notes that the February 15, 2011 amendment allows each building to proceed independently and provides flexibility for the commencement of construction at the earliest possible time; and

WHEREAS, the applicant also notes that CUNY has resumed participation in the project; and

WHEREAS, substantial construction was to be completed by September 23, 2012, in accordance with ZR § 72-23; however, by that date, construction had not been completed due to budgetary constraints; accordingly, on July 24, 2012, the Board granted an extension of time to complete construction, to expire on September 23, 2016; and

WHEREAS, the applicant now seeks an amendment to permit the following: (1) the elimination of the cellar level of the Dormitory Building, which includes accessory parking for 91 automobiles and approximately 6,600 sq. ft. of amenity and storage space; (2) a reduction in floor area for the Dormitory Building from 183,472 sq. ft. to 177,693 sq. ft.; (3) the elimination of the seventh floor; (4) reduction in size of the stair, elevator, and mechanical bulkheads, and reduction in building height; (5) addition of balconies on the fifth and sixth floors; and (6) minor modifications to interior layouts and roof; and

WHEREAS, specifically, the applicant states that the site is, in the wake of Superstorm Sandy, now within ZONE AE on the Federal Emergency Management Agency’s Flood Insurance Rate Map, which means the site is now considered to be within a high-risk, high-vulnerability zone, making a cellar more expensive to insure; and

WHEREAS, in addition, the applicant states that CUNY has reassessed its needs and determined that parking on the originally-proposed scale is neither necessary, nor desirable; and

WHEREAS, the applicant also notes that the zoning district does not require any parking, and that the area is well-served by mass transit; as such, a significant demand for parking onsite is not anticipated; likewise, what little demand exists can be accommodated by nearby facilities; and

WHEREAS, in support of this statement, the applicant provided a parking study, which reflects that the site will have sufficient parking without the cellar parking garage, due in part to the recent construction of new major parking facilities in the vicinity; and

WHEREAS, as for the other proposed modifications to the plans, the applicant states that they are minor in nature and are consistent with the programmatic needs articulated by the applicant and recognized by the Board in its original grant; and

WHEREAS, accordingly, the applicant states that the proposed amendment will have no negative impacts on the surrounding area; and

WHEREAS, at hearing, the Board requested clarification regarding whether excavation had been performed at the site; and

WHEREAS, in response, the applicant stated that excavation has proceeded and is required under the New York State Department of Environmental Conservation-mandated site-management plan; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 2008, to include the above-noted modifications; *on condition* that the use and operation of the site will comply with BSA-approved plans associated with the prior grant; and *on further condition*:

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402661945)

Adopted by the Board of Standards and Appeals, February 25, 2014.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C. for Joy Kiss Management, LLC, owner; Chen Qiao Huang (Good fortune Restaurant), lessee.

SUBJECT – Application December 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously approved variance (§72-21), which expired on March 20, 2012; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

287-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Related Broadway Development LLC, owner; TSI West 94, LLC dba New York Sports club, lessee.

SUBJECT – Application November 20, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment, which expired on April 16, 2011; Waiver of the Rules. C4-6/R8 zoning district.

PREMISES AFFECTED – 2523-2525 Broadway, west side of Broadway between West 93rd Street and West 94th Street, Block 1242, Lot 10, 55, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

331-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (*Century 21*). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum permitted floor area. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway, Block 6911, Lot 6 & 3. Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2013, acting on Department of Buildings (“DOB”) Application No. 110361554 reads, in pertinent part:

1. Proposed heretofore converted dwelling cannot be increased in height or stories as per MDL 171-2(a);
2. Proposed enlargement of the existing heretofore converted dwelling exceeds 25% of the area of the 3rd floor (fourth story) which is contrary to MDL 171-2(f); and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary height and bulk requirements in order to allow for the proposed partial one-story vertical enlargement of the subject three-story and

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basement residential building, contrary to MDL §§ 171(2)(a) and 171(2)(f); and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

WHEREAS, the subject site is located on the south side of West 87th Street, between West End Avenue and Riverside Drive, within an R8 zoning district within the Riverside Drive-West End Historic District; and

WHEREAS, the site has 20 feet of frontage along West 87th Street, a depth of approximately 100.6 feet, and a lot area of 2,013 sq. ft.; and

WHEREAS, the site is occupied by a three-story and basement non-fireproof residential building; and

WHEREAS, the applicant states that the existing building was constructed in approximately 1900 and is currently occupied by eight residential units, with two units per floor; and

WHEREAS, the subject building has a floor area of approximately 5,040 sq. ft. (2.50 FAR) and a height of approximately 47'-0"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a partial fourth floor containing an additional 743.3 sq. ft. of floor area; and

WHEREAS, the applicant states that the front of the proposed fourth floor will include a new, additional unit and the rear will be part of a duplex unit with the third floor; therefore, the proposal will increase the total number of dwelling units in the building from eight to nine; and

WHEREAS, the applicant further states that the proposed enlargement will increase the floor area of the subject building from 5,040 sq. ft. (2.50 FAR) to 5,783.3 sq. ft. (2.87 FAR) and increase the height of the building from 47'-0" to 56'-3"; and

WHEREAS, the applicant notes that the proposed fourth-floor enlargement will be set back 13'-5" from the building's front façade and slanted, so as not to be visible from the street; and

WHEREAS, the applicant also notes that it initially proposed a height of 57'-0", which was reduced at the request of the Landmarks Preservation Commission ("LPC"); and

WHEREAS, MDL § 171(2)(a) states that it is unlawful to "increase the height or number of stories of any converted dwelling or to increase the height or number of stories of any building in converting it to a multiple dwelling"; and

WHEREAS, because any increase in height or number stories of a converted multiple dwelling is prohibited, and the proposed increase of the existing building is from three stories to four stories and from 47'-0" to 56'-3", the Department of Buildings ("DOB") determined that the proposal does not comply with the requirements of MDL § 171(2)(a); and

WHEREAS, MDL § 171(2)(f) states that it is unlawful

to "enlarge or extend any converted dwelling so as to exceed by more than twenty-five per centum the area which such dwelling had on any floor at the time of its conversion . . ."; and

WHEREAS, because the proposed 743.3 sq. ft. enlargement on the fourth floor exceeds 25 percent of the area on the third floor, DOB determined that the proposal does not comply with the requirements of MDL § 171(2)(f); and

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

WHEREAS, as noted above, the subject building was constructed in approximately 1900; therefore, the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL §§ 171(2)(a) and 171(2)(f) relate to height and bulk; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(1); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant states that MDL §§ 171(2)(a) and 171(2)(f) prohibit a vertical enlargement of the subject building and that the third floor cannot practicably be enlarged horizontally to make up for this deficit because the existing building is located within an historic district and the LPC will not approve a third floor horizontal expansion; and

WHEREAS, the applicant represents that because a vertical enlargement is not permitted and a horizontal enlargement is impracticable, the MDL restrictions create a practical difficulty and an unnecessary hardship in that they prevent the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, in particular, the applicant notes that the subject district permits an FAR of 6.02, and the proposed enlargement would increase the FAR of the building from 2.50 to 2.87; and

WHEREAS, based on the above, the Board agrees that there is a practical difficulty and an unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 171(2)(a) and 171(2)(f) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to

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mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire . . .”; and

WHEREAS, accordingly, the applicant represents that the proposed construction promotes the intent of the law because: (1) the new unit will cause minimal impact, as it will increase the unit count to nine, which is well below the 16 total permitted units in a building in an R8 zone; (2) it will be modest in size and set back from the front and rear facades, thereby providing sufficient light and air to the proposed fourth floor without diminishing access to light and air for other units in the building; and (3) it will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) sprinklers will be added to all common areas of the building; (2) new, steel stair ways will be installed; (3) all existing wood stair rails will be replaced with metal; (4) all doors leading to the apartments and cellar will have one-and-one-half-hour fireproof self-closing doors; (5) all public halls will have a new two-hour rated enclosure by an additional new layer of fire resistant gypsum board; (6) two layers of fire resistant gypsum board will be installed in the cellar ceiling; (7) a new layer of fire resistant gypsum board will be installed to the underside of the existing staircases and landings; and (8) all bedrooms will have ceiling mounted hard-wired smoke detectors and carbon-monoxide detectors; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height and bulk requirements of MDL §§ 171(2)(a) and 171(2)(f) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the applicant represents that the proposal will not affect the historical character of the site; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the LPC approving work associated with the proposed enlargement, dated February 5, 2014; and

WHEREAS, at hearing, the Board expressed concerns regarding the dimensions of the proposed dwelling units; and

WHEREAS, in response, the applicant submitted an amended statement clarifying the dimensions of the proposed units and confirming that such units meet the minimum requirements set forth in the Zoning Resolution; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that

the requested variance of the height and bulk requirements of MDL §§ 171(2)(a) and 171(2)(f) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated April 3, 2013, is modified and that the requested waivers are granted, limited to the decision noted above; *on condition* that construction will substantially conform to the plans filed with the application marked, "Received February 21, 2014" eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 5,783.3 sq. ft. (2.87 FAR); nine dwelling units; and a maximum building height of 56'-3", as reflected in the BSA-approved plans;

THAT the dimensions of the proposed dwelling units will be subject to DOB review;

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2014.

214-13-A

APPLICANT – Slater & Beckerman, P.C., for Jeffrey Mitchell, owner.

SUBJECT – Application July 15, 2013 – Appeal seeking a determination that the owner has acquired a common law vested right to complete construction under the prior R3-2 zoning district. R3-X zoning district.

PREMISES AFFECTED – 219-08 141st Avenue, south side of 141st Avenue between 219th Street and 222nd Street, Block 13145, Lot 15, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application requesting a Board determination that the owner of the premises has obtained the right to complete construction of a two-story, two-family residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, and then to decision on

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February 25, 2014; and

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

WHEREAS, the subject site is located on the corner of the intersection of 141st Avenue and 219th Street, within an R3X zoning district; and

WHEREAS, the site has 100 feet of frontage along 141st Avenue, 59.88 feet of frontage along 219th Street, and a lot area of 6,455 sq. ft.; and

WHEREAS, the site is a single zoning lot comprising Lots 14 and 15; and

WHEREAS, Lot 14 is occupied by a two-story single-family dwelling with 1,942 sq. ft. of floor area; Lot 15 is occupied by a two-story, two-family dwelling (the "Building") with 1,920 sq. ft. of floor area, which was constructed as a semi-detached building with the existing dwelling on Lot 14 pursuant to permits that were initially issued in 2006; therefore, the total floor area proposed for the site is 3,862 sq. ft. (0.59 FAR); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former R3-2 zoning district, as well as the open space provisions of the Zoning Resolution prior to the April 30, 2008 citywide text amendment; and

WHEREAS, on July 27, 2006, Alteration Permit No. 402424747-01-NB (the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, however, on April 30, 2008, (the "Text Enactment Date"), the City Council voted to adopt the Yards Text Amendment (the "Text Amendment"), which increased the amount of open space required on the site; later that year, on September 4, 2008 (the "Rezoning Date"), the City Council voted to adopt the Laurelton Rezoning, which zoned the site from an R3-2 zoning district to an R3X zoning district; and

WHEREAS, the Building, which is a two-family, semi-detached building with side yard widths of 8'-0" and 16'-9", a front yard depth of 17'-0", and a rear yard with a depth of 16'-9", does not comply with the current zoning, which allows only single- and two-family detached buildings and requires two side yards with minimum widths of 10'-0" and 20'-0", a minimum front yard depth of 18'-0", and a minimum rear yard depth of 30'-0"; and

WHEREAS, as of the Text Enactment Date, which, as noted above, preceded the Rezoning Date, the applicant had obtained permits but had not completed construction; and

WHEREAS, the applicant represents that although it completed foundations in September 2007, construction stalled in 2008 and the Building was not completed within two years of the Text Enactment Date (or the Rezoning Date); and

WHEREAS, accordingly, the applicant now seeks recognition of a vested right to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Text

Enactment Date and the Rezoning Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated November 15, 2013, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Text Enactment Date (and the Rezoning Date); and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as noted above, the applicant obtained a permit to construct the Building and performed certain work prior to the Text Enactment Date and the Rezoning Date; and

WHEREAS, specifically, the applicant states that the work it performed constitutes substantial construction, in that, prior to the Text Enactment Date and the Rezoning Date, it completed the excavation, footings, foundation, exterior walls, and roof construction; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; copies of cancelled checks; construction permits and inspection reports; contractor payment requests; photographs of the site; and an affidavit from the owner of the site attesting to the timing and nature of the work performed prior to the Text Enactment Date and the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Text Enactment Date and the Rezoning Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the

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applicant's analysis; and

WHEREAS, the applicant represents that the total expenditure paid for construction of the Building is \$153,044.50, or approximately 54 percent, out of the \$282,850 cost to complete; and

WHEREAS, as noted, the applicant has submitted a breakdown of costs and expenditures, copies of cancelled checks, and an affidavit in support of this representation; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that the owner would incur a loss of \$233,044.50 if the Building must be modified to comply with the post-Text Amendment open space requirements and the R3X district regulations; specifically, as noted above, wider side yards and deeper front and rear yards would be required; and

WHEREAS, therefore, the applicant states that the Building would have to be completely demolished at a cost of \$80,000; because the owner has already spent \$153,044.50, the applicant states that that entire amount would be lost as well; further, constructing the new, complying building is estimated to cost \$259,000; and

WHEREAS, the applicant also notes that because the owner currently resides in the building on Lot 14 and has mortgaged the entire lot, having to build a complying building on the site instead of the Building would jeopardize the owner's ability to finance both buildings; and

WHEREAS, accordingly, the applicant represents that complying with the current zoning regulations would result in a serious loss to the owner; and

WHEREAS, the Board agrees that complying with the open space requirements of the Text Amendment and the R3X district regulations would result in a serious economic loss for the applicant; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made before the Text Enactment Date and the Rezoning Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights

requesting a reinstatement of Permit No. 402424747-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, February 25, 2014.

300-13-A

APPLICANT – Goldman Harris LLC, for LSG Fulton Street LLC, owner.

SUBJECT – Application November 7, 2013 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C5-5/C6-4 zoning district.

PREMISES AFFECTED – 112,114 & 120 Fulton Street, Three tax lots fronting on Fulton Street between Nassau and Dutch Streets in lower Manhattan. Block 78, Lot(s) 49, 7501 & 45. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 12, 2013, acting on Department of Buildings Application No. 121333440, reads in pertinent part:

1. Proposed new building does not comply with bulk regulations resulting from the location of the street as per ZR 91-32 Setback regulations for Special Lower Manhattan District; for "Type 3" as defined on Map 2n Appendix A #street walls #, the required setbacks shall be measured from a line drawn at or parallel to the #street line# so that at least 70 percent of the aggregate width of street walls# of the building at the minimum base height are within such line and the #street line# (street widening line);
2. Proposed development which rests partially within the bed of the mapped street is contrary to GCL 35; and

WHEREAS, a public hearing was held on this application on January 28, 2014 after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

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WHEREAS, this is an application to allow the construction of 62-story mixed residential and commercial building, which will be partially located within the widening area for Fulton Street; and

WHEREAS, the subject site is located on the south side of Fulton Street between Nassau Street and Dutch Street, partially within a C5-5 zoning district and partially within a C6-4 zoning district, within the Special Lower Manhattan District; and

WHEREAS, the site comprises three tax lots (Tentative Lots 45, 49, and 7501) with a combined frontage of approximately 125 feet along Fulton Street; and

WHEREAS, the site has 10,378 sq. ft. of lot area, with about 45 percent of the lot area (4,625 sq. ft.) located within the widening area of Fulton Street; and

WHEREAS, the applicant states that, in connection with the proposed development, the site has been declared a single zoning lot with the following parcels: 122 Fulton Street; 80, 86 and 88 Nassau Street; 41-43 John Street; and 15 Dutch Street (Block 78, Lots 44, 7503, 40, 42, 7502, and 7504); and

WHEREAS, by letter dated December 23, 2013, the Fire Department states that it has reviewed the proposal and does not have any objections; and

WHEREAS, by letter dated November 25, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there is an existing 20-inch diameter and a 24-inch diameter City water main in the bed of Fulton Street; (2) there is an existing 18-inch diameter and 14-inch diameter combined sewers in the bed of Fulton Street between Nassau Street and Dutch Street; (3) Modified City Drainage Plan for Sewage District No. 22CL, dated May 3, 1928, calls for a future four-ft. combined sewer to be installed in Fulton Street between Nassau Street and Dutch Street; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped Fulton Street and the width of the widening portions of the street; (2) the distance between the 18-inch diameter and 14-inch diameter combined sewers in the bed of Fulton Street between Nassau Street and Dutch Street; and (3) the location and the distance from the lot line to the existing fire hydrant; and

WHEREAS, in response to DEP’s request, the applicant submitted a revised survey, dated December 9, 2013; the revised survey shows the 90 feet of the total width of the mapped portion of Fulton Street between Nassau Street and Dutch Street, as well as the 55-ft. of the width of the traveled portion of Fulton Street, which will be available for the maintenance and/or reconstruction of the existing sewers, water mains, and the installation of any future sewers; and

WHEREAS, by letter dated January 10, 2014, DEP states that, based on its review of the applicant’s response, it has no objections to the proposal; and

WHEREAS, by correspondence dated January 8, 2014, the Department of Transportation (“DOT”) states that: (1) according to the Manhattan Borough President’s Topographical Bureau, Fulton Street from Dutch Street to Nassau Street is mapped at a 90-ft. width on the Final City

Map; (2) the City does not have title to the southerly portion within Block 78; and (3) construction within the bed of Fulton Street is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, in addition, DOT recommends that the proposed building’s footprint be set back from the existing building line to allow for a widened sidewalk to reduce pedestrian congestion; and

WHEREAS, by letter dated January 14, 2014, the applicant responds that Fulton Street is classified as a Type 3 street for the purposes of applying the Special Lower Manhattan District street wall regulations, and that, per ZR § 91-31(b), at least 70 percent of the aggregate width of street walls on Type 3 streets must be located within ten feet of the street line; accordingly, a setback cannot be provided as requested by DOT without the creation of a zoning non-compliance; and

WHEREAS, therefore, the applicant states that the footprint of the building will not be altered in accordance with DOT’s request, because doing so would require a variance; further, the applicant states that the proposed streetwall maintains the existing, historic character of the streetscape; and

WHEREAS, in addition, in accordance with the Special Lower Manhattan District requirements (ZR § 91-42), the proposal must provide pedestrian circulation space, which, in effect, will further the same goal—reduced pedestrian congestion—as the setback streetwall and widened sidewalk recommended by DOT; and

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

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

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

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

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

Therefore it is Resolved, that the Board modifies the decision of the Manhattan Borough Commissioner, dated

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November 12, 2013, acting on Department of Buildings Application No. 121333440, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received February 3, 2014 (1) sheet; and *on further condition*:

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

THAT DOB will not issue a Certificate of Occupancy until DEP has signed off on the amended drainage plan;

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

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

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

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

Adopted by the Board of Standards and Appeals on February 25, 2014.

143-11-A thru 146-11-A

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department's determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district. PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings' interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

307-13-A & 308-13-A

APPLICANT – Joseph M. Morace, R.A., for Jake Rock, LLC, owner.

SUBJECT – Application November 21, 2013 – Proposed construction of two detached, two-family residences not fronting on a mapped street, contrary to Section 36 of the General City Law. R3A zoning district.

PREMISES AFFECTED – 96 & 100 Bell Street, Block 2989, Lot 24 & 26, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

6-12-BZ

APPLICANT – Syeda Laila, owner.

SUBJECT – Application January 13, 2013 – Variance (§72-21) to permit a four-story residential building, contrary to floor area, (§103-211), dwelling unit (§23-22), front yard (§23-46), side yard (§23-46) and height (§23-631) regulations. R4 zoning district.

PREMISES AFFECTED – 39-06 52nd Street aka 51-24 39th Avenue, Block 128, Lot 39, 40, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, February 25, 2014.

69-12-BZ

APPLICANT – Eric Palatnik, Esq., for Ocher Realty, LLC, owner.

SUBJECT – Application March 22, 2012 – Variance (§72-21) to allow for the construction of residential building, contrary to use regulations (§32-00). C8-2 zoning district.

PREMISES AFFECTED – 1 Maspeth Avenue, east side of Humboldt Street, between Maspeth Avenue and Conselyea

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Street, Block 2892, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals,
February 25, 2014.

95-13-BZ

CEQR #13-BSA-113X

APPLICANT – Eric Palatnik, PC, for Lai Ho Chen, owner;
Tech International Charter School, lessee.

SUBJECT – Application April 2, 2013 – Variance (§72-21)
to permit the enlargement of an existing school (UG 3) at the
second floor, contrary to §24-162. R6/C1-3 and R6 zoning
districts.

PREMISES AFFECTED – 3120 Corlear Avenue, Corlear
Avenue and West 231st Street, Block 5708, Lot 64,
Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough
Commissioner, dated March 20, 2013, acting on Department
of Buildings Application No. 200928979, reads in pertinent
part:

ZR 24-162 – proposed floor area for the
community facility use exceeds maximum
(permitted) floor area; and

WHEREAS, this is an application under ZR § 72-21, to
permit, on a site within an R6 (C1-3) zoning district, the
enlargement of an existing ten-story mixed residential,
community facility and commercial building (Use Groups 2,
3, and 6) that does not comply with regulations regarding
maximum community facility floor area ratio, contrary to ZR
§ 24-162; and

WHEREAS, the application is brought on behalf of the
Technical International Charter School (the “School”), a non-
profit educational institution; and

WHEREAS, a public hearing was held on this
application on November 19, 2013 after due notice by
publication in the *City Record*, with a continued hearing on
January 28, 2014, and then to decision on February 25, 2014;
and

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

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

WHEREAS, the subject site is a flag-shaped lot with
frontages along Corlear Avenue and West 231st Street, within

an R6 (C1-3) zoning district; and

WHEREAS, the site has 118 feet of frontage along
Corlear Avenue, 35 feet of frontage along West 231st Street,
and approximately 15,038 sq. ft. of lot area; and

WHEREAS, the site is a single zoning that comprises
Tax Lots 64 and 110; Lot 64 is occupied by a one-story
commercial building (Use Group 6) with 4,665 sq. ft. of floor
area; Lot 110 is occupied by a ten-story mixed residential,
community facility and commercial (Use Groups 2, 3, and 6)
building (the “Main Building”) with 48,233 sq. ft. of floor
area (15,019 sq. ft. of community facility floor area, 32,801
sq. ft. of residential floor area, 413 sq. ft. of commercial floor
area); the zoning lot has a total floor area of 52,898 sq. ft.
(3.52 FAR); and

WHEREAS, the Main Building includes, at the sub-
cellar, 32 accessory parking spaces; at the cellar, an office,
ambulatory health facility, and storage; at the first story, a
residential lobby, six accessory parking spaces, and the
School; at the second story, 19 accessory parking spaces, at
the third story, the School; and on stories four through ten,
residential (48 dwelling units); and

WHEREAS, the applicant seeks to convert the second
story of the Main Building from parking to program space for
the School, resulting in an increase in community facility floor
area from 15,019 sq. ft. (1.0 FAR) to 22,219 sq. ft. (1.48
FAR); and

WHEREAS, the applicant states that while the
maximum permitted FAR on the lot is 4.8 FAR, the maximum
permitted community facility FAR on the lot is 1.0 FAR and
the existing community facility floor area is 15,019 sq. ft. (1.0
FAR); therefore, the community facility in the Main Building
cannot be increased as-of-right and the applicant seeks a
variance; and

WHEREAS, the applicant notes that the proposed
increase in community facility floor area is entirely within the
existing building envelope; and

WHEREAS, the applicant states that the School is
authorized under its charter to teach sixth, seventh and eighth
graders using a technology-based curriculum, including lab
periods and project development, to complement the
traditional middle school coursework in language arts,
mathematics, science, history, music, art, English-as-a-
Second-Language (“ESL”), and special education; and

WHEREAS, the applicant represents that it has a staff of
20 full-time employees and three part-time employees,
including eight full-time teachers, and it operates Monday
through Friday, from 8:00 a.m. to 5:00 p.m.; and

WHEREAS, however, the applicant states that due to
the School’s lack of program space, it can only accommodate
sixth and seventh grades (214 total students) in its 12
classrooms at the first (six classrooms) and third (six
classrooms) stories of the Main Building; and

WHEREAS, the applicant also states that the School has
experienced substantial growth since opening in September
2013 and that it anticipates enrollment of an additional 88
students in September 2014, which would bring enrollment to
302; and

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WHEREAS, the applicant represents that the proposed enlargement will provide for four new classrooms and a gymnasium at the second story, which, along with other proposed as-of-right renovations within the Main Building cellar, will bring the total number of classrooms to 17; further, the School notes that the proposal will allow it to accommodate up to 330 students, which is the targeted number for the School under its charter; and

WHEREAS, the applicant represents that absent the requested variance, the School would lack sufficient space to meet its programmatic needs; and

WHEREAS, the applicant states that an as-of-right renovation that does not increase the community facility floor area would result in only 15 classrooms and no gymnasium, and it would result in the School's eighth graders being sent to another school; and

WHEREAS, the applicant represents that a gymnasium is essential to its program, in that its middle school-aged children benefit from, and are required under state law to, participate in daily physical activities; and

WHEREAS, the applicant states that without an onsite gymnasium, it would be forced to take students to a recreation facility offsite, which results in additional staffing costs and safety concerns, since students would be forced to leave campus; and

WHEREAS, as to the School's eighth graders being sent to a different school because of space constraints, the applicant asserts that such an occurrence would jeopardize the School's charter and negatively impact its existing students and create a hardship for their families; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate and agrees that the proposed enlargement is necessary to address its needs, given the current unique conditions that constrain the site; and

WHEREAS, accordingly, based on the above, the Board finds that the programmatic needs of the School create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that the surrounding area is characterized by low- to medium-density residential and community facility uses, with commercial uses along major streets; and

WHEREAS, the applicant states that schools in particular are well-represented, and submitted a Land Use Study in support of that statement, which reflects that there are seven schools within three blocks of the site; and

WHEREAS, the applicant notes that the school already exists at the site and is permitted as-of-right in the subject R6 (C1-3) zoning district; and

WHEREAS, as to bulk, the applicant notes that the community facility enlargement authorized by the variance will occur entirely within the Main Building, which complies in all other respects with the bulk regulations, including residential and commercial floor area (as does the entire zoning lot); as such, the applicant states that the proposal will have no impact on surrounding uses; and

WHEREAS, as to the impact of reducing the number of accessory parking spaces on the zoning lot, the applicant states that the elimination of 19 parking spaces to accommodate the School's program space leaves the zoning lot with 38 spaces, which is four more than the minimum number required under ZR §§ 25-23 and 36-21; and

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

WHEREAS, the applicant represents and the Board agrees that the hardship was not self-created and inherent in the unique programmatic needs of the School, in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that, consistent with ZR § 72-21(e), the requested waiver is the minimum necessary to accommodate the programmatic needs of the School; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA113X, dated March 26, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land

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Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 (C1-3) zoning district, the enlargement of an existing ten-story mixed residential, community facility and commercial building (Use Groups 2, 3, and 6) that does not comply with regulations regarding maximum community facility floor area ratio, contrary to ZR § 24-162, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 4, 2014"- Twelve (12) sheets"; *on further condition*:

THAT the community facility floor area will not exceed 22,219 sq. ft. (1.48 FAR) and that a minimum of 38 accessory parking spaces will be provided, as shown on the BSA-approved plans;

THAT construction will proceed in accordance with ZR § 72-23; and

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2014.

153-13-BZ

CEQR #13-BSA-138K

APPLICANT – Eric Palatnik, PC, for Williamsburg Workshop, LLC, owner; Romi Ventures, LLC, lessee.

SUBJECT – Application May 10, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Soma Health Club*) contrary to §32-10. C4-3 zoning district.

PREMISES AFFECTED – 107 South 6th Street, between Berry Street and Bedford Avenue, Block 2456, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 10, 2013, acting on Department of Buildings Application No. 320522911, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-3 zoning district, the legalization of an existing physical culture establishment ("PCE") in portions of the cellar, first, and second floors of an existing four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, with a continued hearing on January 28, 2014, and then to decision on February 25, 2014; and

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

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

WHEREAS, the subject site is located on the north side of South 6th Street, between Berry Street and Bedford Avenue, within a C4-3 zoning district; and

WHEREAS, the site has 84.17 feet of frontage along South 6th Street and approximately 5,516 sq. ft. of lot area; and

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

WHEREAS, the PCE occupies 5,516.35 sq. ft. of floor area on the first floor, 4,878 sq. ft. of floor area on the second floor, and an additional 5,516.35 sq. ft. of floor space in the cellar, for a total PCE floor space of 15,910.7 sq. ft.; and

WHEREAS, the applicant notes that the PCE has been

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in operation since February 1, 2010; and

WHEREAS, the PCE is currently operated as Soma Health Club; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; the applicant states that massages will not be performed at the PCE; and

WHEREAS, the hours of operation for the PCE will be Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday from 5:00 a.m. to 10:00 p.m., Saturday, from 7:00 a.m. to 8:00 p.m., and Sunday, from 8:00 a.m. to 8:00 p.m.; and

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

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify the status of: (1) the active vacate order on the building; and (2) the open DOB violations at the site; and

WHEREAS, in response, the applicant submitted a letter from the owner regarding the vacate order, which was issued for residential occupancy on the third and fourth floors of the building contrary to the certificate of occupancy and without a second means of egress; the owner represents that there has not been residential occupancy since 2011 and that, in November 2013, permits were obtained and work commenced on the restoration of the fire escape to the third and fourth floors and the demolition of the partitions and plumbing related to the residential occupancy; the owner also states that after the work has been completed, the vacate order will be rescinded; and

WHEREAS, as to the open violations, the applicant states that only three of the 18 violations are PCE-related, and that such violations will be resolved following the issuance of the special permit; the applicant notes that the other violations are related to the illegal residential occupancy; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings

pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA138K, dated May 10, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C4-3 zoning district, the legalization of an existing PCE in portions of the cellar, first, and second floors of an existing four-story commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked "Received October 16, 2013" – Five (5) sheets; and *on further condition*:

THAT the term of this grant will expire on February 1, 2020;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2014.

220-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yitzchok Perlstein, owner.

SUBJECT – Application July 22, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue J, north side of Avenue J between East 21st and East 22nd Street, Block 7585, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated January 21, 2014, acting on DOB Application No. 320771660, reads in pertinent part:

1. Proposed floor area is contrary to ZR 23-141(a) in that the proposed FAR exceeds the permitted 0.50
2. Proposed open space is contrary to ZR 23-141(a) in that the proposed OSR is less than the required 150 percent
3. Plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on ***, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

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

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

WHEREAS, the subject site is located on the north side of Avenue J, between East 21st Street and East 22nd Street, within an R2 zoning district; and

WHEREAS, the site has a lot area of 5,000 sq. ft. and is occupied by a single-family home with a floor area of 3,885.72 sq. ft. (0.78 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 3,885.72 sq. ft. (0.78 FAR) to 4,999.87 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce the open space ratio from 92 percent to 55 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 30’-8½” to 20’-0”;

WHEREAS, a minimum rear yard depth of 30’-0” is required; and
WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that the proposed 1.0 FAR is consistent with the bulk in the surrounding area and submitted an analysis indicating that there are eight homes within one block of the site with an FAR of 1.0 or greater; and

WHEREAS, at hearing, the Board directed the applicant to add notes to the plans indicating that porches and decks would be subject to the approval of DOB; and

WHEREAS, in response, the applicant submitted amended plans showing the required notes; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received January 21,

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2014”- twelve (12) sheets and “February 18, 2014” – one (1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,999.87 sq. ft. (1.0 FAR), a minimum open space ratio of 55 percent, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT porches, decks, and calculation of floor area will subject to the approval of DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2014.

272-13-BZ

CEQR #14-BSA-043Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 78-14 Roosevelt LLC, owner; Blink 78-14 Roosevelt, Inc., lessee.

SUBJECT – Application September 18, 2013 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within a portions of an existing commercial building. C2-3/R6 & R5 zoning district.

PREMISES AFFECTED – 78-02/14 Roosevelt Avenue aka 40-41 78th Street and 40-02 79th Street, south side of Roosevelt Avenue between 78th Street and 79th Street, Block 1489, Lot 7501, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 11, 2013, acting on Department of Buildings (“DOB”) Application No. 420894223, reads in pertinent part:

Proposed physical culture establishment in C2-3 zoning district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C2-3 (R6) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment

(“PCE”) on portions of the first and second floors of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is an irregularly-shaped lot occupying the entire block frontage on the south side of Roosevelt Avenue between 78th Street and 79th Street, partially within a C2-3 (R6) zoning district and partially within an R5 zoning district; and

WHEREAS, the site has 150 feet of frontage along 78th Street, 238.45 feet of frontage along Roosevelt Avenue, 100 feet of frontage along 79th Street, and 29,767 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building, a portion of which was enlarged pursuant to a grant from the Board under BSA Cal. No. 496-23-BZ, which also authorized the use of the building for public parking; and

WHEREAS, the applicant notes that, per Certificate of Occupancy No. 212624, issued July 18, 1990, the lawful use of the building is for retail stores and offices (Use Group 6) and three accessory parking spaces; and

WHEREAS, the proposed PCE will occupy 524 sq. ft. of floor area on the first floor and 15,779 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R5 portion of the site; and

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

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE are Monday through Saturday, from 5:30 a.m. to 11:00 p.m., and Sunday from 7:00 a.m. to 9:00 p.m.; and

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

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

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

WHEREAS, at hearing, the Board directed the applicant to amend the plans to clearly show that the proposed use and signage are entirely outside the R5 portion of the site, and that the signage is in compliance with the C2-

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3 regulations for accessory signs; and

WHEREAS, in response, the applicant submitted amended plans showing compliant signage; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; however, the Board has reduced the term of the grant to reflect the period of time that the PCE operated without the special permit; 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 discussed in the Environmental Assessment Statement, CEQR No. 14BSA043Q dated September 16, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C2-3 (R6) zoning district and partially within an R5 zoning district, the operation of a PCE on portions of the first and second floors of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 12, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 25, 2024;

THAT the entrance to the PCE and all signage for the PCE will be restricted to the C2-3 (R6) portion of the site;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 25, 2014.

78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

77-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Goldy Jacobowitz, owner.

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 91 Franklin Ave, 82'-3" south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

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263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

76-13-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Pometko, owner.

SUBJECT – Application February 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141), side yards (§23-461), and less than the minimum required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 176 Oxford Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

94-13-BZ

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40th Avenue aka 38-78 12th Street, Block 473, Lot 473, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for deferred decision.

160-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yitzchok and Hindy Blumenkrantz, owners.

SUBJECT – Application May 28, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1171-1175 East 28th Street, east side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

177-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Ratsenberg, owner.

SUBJECT – Application June 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, to be converted to a two-family home, contrary to floor area, lot coverage and open space (§ZR 23-141) and less than the required rear yard (§ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 134 Langham Street, west side of Langham Street between Shore Boulevard and Oriental Boulevard, Block 8754, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of

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Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

213-13-BZ

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

216-13-BZ & 217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City Law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

236-13-BZ

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and mezzanine floors of the existing building, and Special Permit (§73-52) to allow the fitness center use to extend 25'-0" into the R8 portion of the zoning lot. C6-2 & R8 zoning district.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275' east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for decision, hearing closed.

268-13-BZ

APPLICANT – Belkin Burden Wenig & Goldman, LLP, for Rachel H.Opland, Adrienne & Maurice Hayon, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-621) to permit legalize an enlargement to a three-story mixed use building, contrary to lot coverage regulations (§23-141). R5 zoning district.

PREMISES AFFECTED – 2849 Cropsey Avenue, north east side of Cropsey Avenue, approximately 25.9 feet northwest from the corner formed by the intersection of Bay 50th St. and Cropsey Avenue, Block 6917, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

274-13-BZ

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 11, 2014, at 10 A.M., for decision, hearing closed.

282-13-BZ

APPLICANT – Flora Edwards, Esq., for Red Hook Property Group, LLC, owner; High Mark Independent, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-19) to permit construction of a new 89,556 sq.ft. school (*The Basis Independent Schools*). M1-1 zoning

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district.

PREMISES AFFECTED – 556 Columbia Street aka 300 Bay Street, west side of Columbia Street between Bay Street and Sigourney Street, Block 601, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

293-13-BZ

APPLICANT – Slater & Beckerman, P.C., for JSB Reality No 2 LLC, owner; Fitness International, LLC aka LA Fitness, lessee.

SUBJECT – Application October 23, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*LA Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 78-04 Conduit Avenue, west side of South Conduit Avenue between Linden Boulevard, and Sapphire Avenue, Block 11358, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on September 10, 2013, under Calendar No. 83-13-BZ and printed in Volume 98, Bulletin Nos. 35-37, is hereby corrected to read as follows:

83-13-BZ

CEQR #13-BSA-107K

APPLICANT – Boris Saks, Esq., for David and Maya Burekhovich, owners.

SUBJECT – Application March 4, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district. PREMISES AFFECTED – 3089 Bedford Avenue, Bedford Avenue and Avenue I and Avenue J, Block 7589, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 26, 2013 acting on Department of Buildings Application No. 320704877, reads in pertinent part:

The proposed enlargement of the existing one family residence:

4. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141;
5. Creates non-compliance with respect to the open space ratio and is contrary to Section 23-141;
6. Creates non-compliance with respect to rear yard by not meeting the minimum requirements of Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2013, and then to decision on September 10, 2013; and

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

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a lot area of 6,000 sq. ft. and is occupied by a single-family home with a floor area of 2,393 sq. ft. (0.4 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,393 sq. ft. (0.40 FAR) to 5,994 sq. ft. (1.0 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also proposes to increase its non-complying rear yard depth from 19’-8¾” to 20’-0” (a minimum rear yard depth of 30’-0” is required) and reduce its open space from 177 percent to 54 percent (a minimum open space of 150 percent is required); and

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

WHEREAS, the Board agrees with the applicant that the proposed bulk is in keeping with the character of the neighborhood; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, and rear yard, contrary to ZR §§23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 19, 2013”- (2) sheets and “July 29, 2013”-(10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,994 sq. ft. (1.0 FAR), a

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minimum open space of 54 percent, and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

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

Adopted by the Board of Standards and Appeals, September 10, 2013.

***The resolution has been corrected to indicate that the approved floor area is 5,994 sq. ft . Corrected in Bulletin Nos. 8-9, Vol. 99, dated March 6, 2014.**

*CORRECTION

This resolution adopted on February 4, 2014, under Calendar No. 209-13-BZ and printed in Volume 99, Bulletin No. 6, is hereby corrected to read as follows:

209-13-BZ

CEQR #14-BSA-005M

APPLICANT – Sheldon Lobel, P.C., for 12 W21 Land, L.P., owner.

SUBJECT – Application July 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*NY Physical Training Fitness Studio*) within the existing building, contrary to C6-4A zoning district.

PREMISES AFFECTED – 12 West 21st Street, between 5th Avenue and 6th Avenue, Block 822, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 6, 2013, acting on Department of Buildings (“DOB”) Application No. 121094813, reads in pertinent part:

Physical culture establishment is not permitted as-of-right in a C6-4A zoning district and is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4A zoning district within the Ladies’ Mile Historic District, the legalization of a physical culture establishment (“PCE”) on the second floor of a 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 14, 2014 after due notice by publication in *The City Record*, and then to decision on February 4, 2014; and

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

WHEREAS, Community Board 5 Manhattan, expresses no objection to this application; and

WHEREAS, the subject site is located on the south side of West 21st Street, between Fifth Avenue and Avenue of the Americas, within a C6-4A zoning district within the Ladies’ Mile Historic District; and

WHEREAS, the site has approximately 50.5 feet of frontage along West 21st Street, and 4,646 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a 12-story commercial building with 54,220 sq. ft. of floor area (11.67 FAR); and

WHEREAS, the PCE occupies approximately 4,242 sq. ft. of floor area on the second floor of the building; and

WHEREAS, the PCE began operation as New York Personal Training Fitness Studio on January 1, 2008; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE are seven days per week, 24 hours per day; and

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

WHEREAS, the Landmarks Preservation Commission has issued a Certificate of No Effect for the interior alterations and the exterior signage, dated October 2, 2013; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; however, the Board has reduced the term of the grant to reflect the period of time that the PCE operated without the special permit; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA005M dated July 8, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-4A zoning district within the Ladies' Mile Historic District, the legalization of a PCE on the second floor of an 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 6, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 1, 2018;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 4, 2014.

***The resolution has been revised to correct the Owner's name and to remove the extra hyphen in the zoning district. Corrected in Bulletin Nos. 8-9, Vol. 99, dated March 6, 2014.**

BULLETIN

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March 12, 2014

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36-14-BZ

101 Maiden Lane, Northeast corner of Maiden Lane and Pearl Street, Block 69, Lot(s) 6, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow the construction of a physical culture establishment within a mixed use pursuant to 32-10 zoning resolution. C5-5(LM) district.

37-14-BZ

86-10 Roosevelt Avenue, West corner of Elbertson Street and Roosevelt Avenue, Block 1502, Lot(s) 6, Borough of **Queens, Community Board: 4**. Special Permit (§73-36) to allow a physical culture establishment (Enterprise Fitness Gym), which will occupy a portion of the second floor of a two story building. C2-3/R6 zoning district. R6C2-3 district.

38-14-BZ

116 Oxford Street, Oxford Street between Shore boulevard and Oriental Boulevard, Block 8757, Lot(s) 89, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) the enlargement of single family home in a residential district (R3-1) contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47) zoning resolution. R3-1 zoning district. R3-1 district.

39-14-BZ

97 Reade Street, Between West Broadway & church Street, Block 145, Lot(s) 7504, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment (Exceed Fitness) located within a C6-3A zoning district. C6-3A district.

39-14-BZ

97 Reade Street, Between West Broadway and Church Street, Block 145, Lot(s) 7504, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture(Exceed Physical Culture) establishment within an existing building on the ground floor, cellar and sub-cellar located in C6-3A Zoning District. C6-3A district.

40-14-BZ

1413/21 Fulton Street, North side of Fulton Street, 246 Ft. West of Tompkins Avenue, Block 1854, Lot(s) 52, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-36) to allow a physical culture establishment (Blink Fitness) within an existing commercial building located within a C2-4 zoning district. C2-4R7D R6B 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

MARCH 25, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 25, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

116-68-BZ & 960-67-BZ

APPLICANT – Akerman LLP By Steven Sinacori for 40 CPS Associates, LLC, owner.

SUBJECT – Application December 26, 2013 – Amendment of a previously approved variance to transfer excess development rights from Lot 6 to the adjacent tax lot to the east, 36 Central Park South. R10-H zoning district.

PREMISES AFFECTED – 36 & 40 Central Park South, South side of Central Park South between 6th and 5th Avenues. Block 1274, Lot(s) 6, 11, Borough of Manhattan.

COMMUNITY BOARD #5M

186-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (Use Groups 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

COMMUNITY BOARD #12Q

197-05-BZ

APPLICANT –Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application February 11, 2014 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting an 11 story residential building with commercial on the ground floor contrary to bulk regulations, which expired on January 12, 2014. C6-1 district.

PREMISES AFFECTED – 813-815 Broadway, west side of Broadway, 42' south of East 12th Street, Borough of Manhattan.

COMMUNITY BOARD #2M

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Flatland 3706 Real Estate, LLC, owner.

SUBJECT – Application February 7, 2014 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling which expires on October 17, 2014. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Bard and Tyler Avenues, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEALS CALENDAR

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

ZONING CALENDAR

347-12-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, Mitchell S. Ross, Esq., for X & Y Development Group, LLC., owner.

SUBJECT – Application December 26, 2012 – Variance (§72-21) to permit transient hotel (UG5) in residential district contrary to §22-10, and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport contrary to §61-20. R7-1 (C1-2) zoning district.

PREMISES AFFECTED – 42-31 Union Street, east side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11, 14, 15, Borough of Queens.

COMMUNITY BOARD #7Q

253-13-BZ

APPLICANT – Eric Palatnik, P.C., for Miyer Yusupov, owner.

SUBJECT – Application August 30, 2013 – Special Permit (§73-621) for the enlargement of an existing two story two family home contrary to §23-141B floor area and floor area ratio requirements. R4B zoning district.

CALENDAR

PREMISES AFFECTED – 66-31 Booth Street, north side of Booth Street between 66th and 67th Avenue, Block 3158, Lot 96, Borough of Queens.

COMMUNITY BOARD #6Q

318-13-BZ

APPLICANT – Bryan Cave LLP, for TJD 21 LLC, owners.
SUBJECT – Application December 13, 2013 – Variance (§72-21) to permit construction of a 12,493 square foot, 5 FAR building containing Use Group 6 retail and Use group 2 residential uses on a vacant lot in an M1-5B zoning district.

PREMISES AFFECTED – 74 Grand Street, North side of Grand Street, 25 feet east of Wooster Street. Block 425, Lot 60, Borough of Manhattan.

COMMUNITY BOARD # 2M

34-14-BZ & 498-83-BZ

APPLICANT – Rampulla Associates Architects, for Anthony Vasaturo, owner; MS Fitness, LLC, lessee.

SUBJECT – Application February 19, 2014 – Special Permit (§73-36) to permit the operation of a physical culture (*Club Metro USA*) establishment within an existing building.

Amendment of a previous approved variance to permit the change of use from Banquet Hall (UG 9 & 12) to PCE; reduce the building size and retain accessory parking in the R3X zoning district. C8-1 and R3X zoning district.

PREMISES AFFECTED – 2131 Hylan Boulevard, north side of Hylan Boulevard, corner formed by the intersection of Hylan Boulevard and Bedford Avenue, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 4, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

13-78-BZ

APPLICANT – Sheldon Lobel, P.C., for 2K Properties Inc., owner.

SUBJECT – Application July 23, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a plumbing supply establishment (*Jamaica Plumbing and Heating Supply, Inc.*) which expired on June 27, 2013. R4-1 & R6A/C2-4 zoning districts.

PREMISES AFFECTED – 144-20 Liberty Avenue, east side of Liberty Avenue between Inwood Street and Pinegrove Street, Block 10043, Lot 6, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued operation of a plumbing supply establishment (Use Group 17) with accessory parking partially within an R6A (C2-4) zoning district and partially within an R4-1 zoning district, which expired on June 27, 2013; and

WHEREAS, a public hearing was held on this application on January 14, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 11, 2014, and then to decision on March 4, 2014; and

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

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the subject site is an irregular lot located on the east side of Liberty Avenue, between Pinegrove Street and Inwood Street, partially within an R6A (C2-4) zoning district and partially within an R4-1 zoning district; and

WHEREAS, the site has 10,654 sq. ft. of lot area and is occupied by a one-story, plumbing supply establishment with

7,897 sq. ft. of floor area (0.74 FAR) and accessory parking; and

WHEREAS, the Board has exercised jurisdiction over the site since June 27, 1978, when, under the subject calendar number, the Board granted a variance permitting the construction of a one-story enlargement to an existing plumbing supply establishment with accessory storage of supplies within an R4 zoning district, contrary to use regulations and for a term of ten years, to expire on June 27, 1988; and

WHEREAS, subsequently, the grant was amended and the term was extended, most recently on February 11, 2003, when the Board extended the term of the variance for ten years, to expire on June 27, 2013; and

WHEREAS, the applicant now requests an extension of the term for 20 years; and

WHEREAS, the applicant notes that the site has been rezoned to permit certain commercial uses as-of-right; as such, while the plumbing supply equipment establishment remains non-conforming, it is now more compatible with the surrounding neighborhood than it was when it was originally authorized by the Board; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) notify neighbors within 200 feet of the site that a 20-year term was sought; and (2) remove illegal signage at the site; and

WHEREAS, in response, the applicant submitted: (1) proof of notification of neighbors; and (2) photographs and a signage analysis demonstrating compliance with prior BSA-approved plans; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, as adopted on June 27, 1978, so that as amended this portion of the resolution will read: “to grant an extension of the variance for a term of 20 years from the prior expiration, to expire on June 27, 2033, *on condition* that that any and all work shall substantially conform to drawings filed with this application marked “Received January 28, 2014”- (3) sheets; and *on further condition*;

THAT the term of the variance will expire on June 27, 2033;

THAT the above condition will be listed on the certificate of occupancy;

THAT an amended certificate of occupancy will be obtained by March 4, 2015;

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

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

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

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Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 420837081)

Adopted by the Board of Standards and Appeals, March 4, 2014.

5-28-BZ

APPLICANT – Eric Palatnik, P.C., for Steven Feldman, owner; Anwar Ismael, lessee.

SUBJECT – Application August 20, 2013 – Amendment (§11-413) of a previously approved variance which permitted the operation of an automotive service station (UG 16B). The amendment seeks to change the use to a car rental establishment (UG 8). R6 zoning district.

PREMISES AFFECTED – 664 New York Avenue, west side of New York Avenue, spanning the entire length of the block between Hawthorne Street and Winthrop Street, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

923-77-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1899-1905 McDonald Avenue Associates, LLC, owner.

SUBJECT – Application November 14, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted a one-story manufacturing building which expired on May 31, 2013. R5 (OP) zoning district.

PREMISES AFFECTED – 1905 McDonald Avenue, east side of McDonald Avenue, 105 ft. south of Quentin Road, Block 6658, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs, Inc., owner.

SUBJECT – Application November 7, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 Eating and Drinking establishment (*The Townhouse*) which expired on July 9, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 9, 2003; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 234 East 58th Street, south side of East 58th Street, Block 1331, Lot 32, Borough of

Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

799-89-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1470 Bruckner Boulevard Corp., owner.

SUBJECT – Application September 24, 2013 – Extension of Term of a previously approved Variance (ZR 72-21) for the continued operation of a UG 17 Contractor's Establishment (*Colgate Scaffolding*) which expired on December 23, 2013. C8-1/R6 zoning district.

PREMISES AFFECTED – 1460-1470 Bruckner Boulevard, On the South side of Bruckner Blvd between Colgate Avenue and Evergreen Avenue. Block 3649, Lot 27 & 30. Borough of Bronx.

COMMUNITY BOARD #9BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application May 17, 2013 – Extension of Term of a previously approved Variance (§72-21) for the construction of an automotive service station (UG 16B) with accessory convenience store which expired on January 28, 2013; Waiver of the rules. C1-1/R3X (SRD) zoning district. PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta Lane, Block 7734, Lot 13 & 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

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246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application October 16, 2013 – Amendment of a previously approved Special Permit (§73-36) for a physical culture establishment (*Bodhi Fitness Center*). The amendment seeks to enlarge the PCE space by 3,999 sq. ft. M1-1, C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application December 18, 2013 – Extension of time and complete construction and secure Certificates of Occupancy. R5D zoning district.

Extension of time and complete construction and secure Certificates of Occupancy. R5D zoning district.

PREMISES AFFECTED – 69-17 38th Avenue aka 69-19 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

98-13-A

APPLICANT – Eric Palatnik, P.C., for Scott Berman, owner.

SUBJECT – Application April 8, 2013 – Proposed two-story two family residential development which is within the unbuilt portion of the mapped street on the corner of Haven Avenue and Hull Street, contrary to General City Law 35. R3-1 zoning district.

PREMISES AFFECTED – 107 Haven Avenue, Corner of Hull Avenue and Haven Avenue, Block 3671, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

ZONING CALENDAR

6-13-BZ

CEQR #13-BSA-079K

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school (*Yeshiva Ohr Yisrael*), contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 13, 2012, acting on Department of Buildings Application No. 320619023, reads in pertinent part:

Proposed floor area ratio and lot coverage contrary to ZR 24-11;

Proposed side yards contrary to ZR 24-35;

Proposed rear yard contrary to ZR 24-36;

Proposed sky exposure plane contrary to ZR 24-521;

Proposed building does not provide parking contrary to ZR 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R3-2 zoning district, the construction of a four-story building to be occupied by a synagogue (Use Group 3) and a school (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, side yard, rear yard, sky-exposure plane, and parking, contrary to ZR §§ 24-11, 24-35, 24-36, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013, December 10, 2013 and January 14, 2014, and then to decision on March 4, 2014; and

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

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

WHEREAS, certain members of the surrounding community, including a representative of the Marine Park

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Civic Association, submitted testimony in opposition to the application, citing concerns about: the height, bulk, and rear windows of the building; the effect of construction on neighboring soil; and increases in traffic and garbage; and

WHEREAS, this application is being brought on behalf of Yeshiva Ohr Yisrael of Marine Park (the "Congregation"), a non-profit religious entity which will occupy the proposed building; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Madison Place and Nostrand Avenue, within an R3-2 zoning district; and

WHEREAS, the site has approximately 91 feet of frontage along Nostrand Avenue and 5,440 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story community facility building with approximately 4,228 sq. ft. of floor area; and

WHEREAS, the applicant states that the Congregation uses the existing building at the site as a synagogue and school in conjunction with a nearby facility located at 2940 Avenue P; and

WHEREAS, the applicant represents that the existing facilities are unable to accommodate the growing religious and educational needs of the Congregation; as such, the Congregation seeks to develop the site with a new integrated synagogue and educational facility; and

WHEREAS, the applicant states that the proposal will result in a building with the following parameters: four stories; a floor area of 20,420 sq. ft. (3.75 FAR) (a maximum community facility floor area of 5,440 sq. ft. (1.0 FAR) is permitted); a lot coverage of 100 percent (the maximum permitted lot coverage is 60 percent); no side yards (two side yards with minimum widths of 9.18 feet are required); a rear setback of 15 feet at the third and fourth stories (a minimum rear yard depth of 30 feet is required; however, such yard may be provided above a one-story community facility with a maximum height of 23 feet); a front wall height of 52 feet with no setback (a front setback above 25 feet and a 1-to-1 sky exposure plane are required) and no parking spaces (a minimum of 21 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a five-story building with 27,200 sq. ft. of floor area (5.0 FAR), no rear setback, a front wall height of 70 feet, and a gymnasium with a floor-to-ceiling height of 18 feet; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the FAR and building height, provided a rear setback of 15 feet at the third and fourth stories, and replaced the gymnasium with an outdoor rooftop recreation space; and

WHEREAS, the proposal provides for the following uses: (1) main sanctuary (which also serves as a postgraduate study hall), restrooms, lobby, coat rooms, pantry, rabbi's study, and offices at the first story; (2) women's balcony, three college-level Shiur classrooms, teachers' lounge, offices, kitchenette (warming pantry), and restrooms at the second

story; (3) a study room, open lounge area, restroom, and one Shiur room at the third story; (4) six classrooms (including a science and computer lab), an office and restrooms at the fourth story; and (5) atop the fourth story roof, a fenced recreation area; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 200 members; (2) to provide a separate worship space for male and female congregants; (3) to locate the synagogue within the Marine Park neighborhood, which allows congregants to walk to services, as required for reasons of religious observance; (4) to provide space for hosting special events for congregants, such as Bar/Bat Mitzvahs; (5) to provide an integrated educational facility for high school, college and post-graduate studies; and (6) to consolidate the recreation space for the school, which is currently dispersed among three rented sites; and

WHEREAS, the applicant states that it currently operates a four-year college offering a degree in Talmudic Studies at the existing building at the site, and that it has operated the college for approximately ten years; and

WHEREAS, the applicant states that the enrollment of the college is approximately 80 students (approximately 20 per class), and that although it expects only modest growth in the coming years, the existing building at the site is wholly unsuitable due to its limited space and dual use as a synagogue; and

WHEREAS, in addition, the applicant states that in 2012, the Congregation started a high school program at its Avenue P facility; the high school began with 20 ninth graders and is anticipated to increase in enrollment each year until a full, four-year high school is operating with approximately 80 students; and

WHEREAS, the applicant represents that the proposal will also provide: (1) a secure place where students can enjoy an educational experience that is carefully designed to develop their intellectual and social skills; (2) a safe place where students can engage in activities and special projects, and develop positive character traits, including teamwork, respect for others, self-discipline, and individual responsibility; (3) an institution for advanced religious learning; and (4) a community center where families can spend time together in an environment that is respectful of their religious identity; and

WHEREAS, the applicant states that the as-of-right building would have only two stories and 5,440 sq. ft. of floor area (1.0 FAR), and be only marginally better than the current one-story facility, which only has 4,228 sq. ft. of floor area (0.8 FAR) and is far too small to satisfy the Congregation's programmatic needs; and

WHEREAS, likewise, the applicant explored the feasibility of a lesser variance scenario in which the floor-to-floor heights were reduced in order to bring the building height to 49 feet; however, this scenario resulted in floor-to-ceiling heights of eight feet, which, the applicant notes would

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be well below the standard heights for classrooms according to the School Construction Authority; and

WHEREAS, the applicant states that the floor area, lot coverage, yards, and sky-exposure plane waivers allow for the double-height ceiling of the main sanctuary (which is necessary to create a space for worship and respect), an adequate ceiling height for the second story women's balcony, and sufficient program space (classrooms, offices, and study areas) for the Congregation to carry out its educational programs, as described above; and

WHEREAS, as to parking, the applicant states that 88 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification waiving parking for a locally-oriented house of worship; and

WHEREAS, therefore, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations, in accordance with ZR § 72-21(a); and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant states that the surrounding area is characterized by its diversity, both in terms of use and bulk; and

WHEREAS, the applicant states, that Nostrand Avenue, the main local thoroughfare in the vicinity, is zoned R3-2, R4 and R5 and there are a variety of commercial overlays, resulting in a mixture of residential, community facility and commercial uses, including several multiple dwellings and mixed use buildings; and

WHEREAS, the applicant notes that that the proposed use is permitted as-of-right in the subject zoning district and that, as such, only bulk waivers are necessary; and

WHEREAS, as to bulk, the applicant identified several buildings in the immediate vicinity that are similar in bulk to the proposed building, including: (1) the four- and seven-story multiple dwellings that are directly across Nostrand Avenue from the site, which do not provide side yards (the four-story building was authorized by variance from the Board under BSA Cal. No. 25-06-BZ); (2) the Kingsway Jewish Center at the intersection of Nostrand Avenue and Kings Highway (a sprawling campus of two-, three- and four-story buildings); (3) five- and six-story multiple dwellings and mixed use buildings along Kings Highway; and (4) the Madison Jewish Center, which has a (non-complying) floor area of 24,107 sq. ft. (0.74 FAR); and

WHEREAS, as to the immediately adjacent uses, the applicant states that a car wash facility is directly north of the site, a light manufacturing building (wood flooring) is directly south, and east of the site, are accessory garages and rear yards of the two-story residences that front on Marine Parkway; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic commercial use of the site; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 88 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 (Waiver for Locally Oriented Houses of Worship); and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 88 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to concerns raised by community residents and neighbors, at hearing, the Board directed the applicant to clarify the following aspects of the application: (1) the condition of the residential yards to the rear of the site; (2) whether there would be roof access above the second story roof; (3) how garbage will be stored and collected; (4) the occupant loads of the various spaces; and (5) the extent of soil disturbance proposed; and

WHEREAS, in response, the applicant provided: (1) clear photographs showing the condition of the abutting residential yards; (2) amended plans showing the elimination of the door to the second story roof, a garbage storage room at the first story, and occupant loads for all rooms; and (3) a report from an environmental consultant, which indicates that contamination from the adjacent site could not have affected the soil at the site; and

WHEREAS, in addition, the applicant represents that garbage collection will occur no fewer than three times per week (two City collections and one from a private hauler);

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and

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

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

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

WHEREAS, as noted above, through the hearing process, the proposal was reduced in height and floor area and was modified in order to minimize its impacts on adjacent uses; accordingly, the Board finds that, consistent with ZR § 72-21(e), the requested waivers are the minimum necessary to afford the Congregation the relief needed to meet its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA079K, dated January 11, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R3-2 zoning district, the construction of a four-story building to be occupied by a synagogue (Use Group 3) and a school (Use Group 4), which does not comply with the underlying zoning

district regulations for floor area, lot coverage, side yard, rear yard, sky-exposure plane, and parking, contrary to ZR §§ 24-11, 24-35, 24-36, 24-521, and 25-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 28, 2014" – Ten (10) sheets; and *on further condition*:

THAT the building parameters will be: four stories; a maximum floor area of 20,420 sq. ft. (3.75 FAR); a maximum wall height of 52 feet; and a rear setback with a minimum depth of 15 feet at the third and fourth stories, as illustrated on the BSA-approved plans;

THAT any change in use or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a school (Use Group 3) and a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

THAT garbage will be stored within the building until pickup;

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

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

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

THAT construction will proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, March 4, 2014.

78-13-BZ
CEQR #13-BSA-103K

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 24, 2013, acting on Department of Buildings Application No. 310072818, reads, in pertinent part:

ZR 42-00 – Residential use is not permitted in manufacturing district; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district, the construction of a four-story residential building (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in the *City Record*, with a continued hearing on September 24, 2013, and then to decision on March 4, 2014; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, Councilperson Letitia James submitted a letter in support of this application; and

WHEREAS, the subject site is a rectangular lot located on the west side of Kent Avenue between Myrtle Avenue and Park Avenue, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district; and

WHEREAS, the site has 25 feet of frontage along Kent Avenue, a lot depth of 90 feet, and a lot area of 2,250 sq. ft.; and

WHEREAS, the applicant states that the site is now vacant, but was previously occupied by a three-story mixed residential and commercial building that was built in or around 1905 and demolished in 2003; and

WHEREAS, the applicant notes that a variance application was filed for the site in 2008, under BSA Cal. No. 238-08-BZ; such application was dismissed for lack of prosecution on February 23, 2010; however, on July 24, 2012, the Board granted a rehearing of the application based on the applicant's revision of the proposal to comply with the R6 regulations with regard to floor area ratio, rear setback, and street wall location; and

WHEREAS, the applicant represents that the proposed residential building (Use Group 2), will have a floor area of 4,930.2 sq. ft. (2.2 FAR), a building height of 48'-11", a rear yard depth of 33'-0", and four dwelling units; and

WHEREAS, initially, the applicant proposed a building with a floor area of 5,680 sq. ft. (2.52 FAR) and a height of 53'-11"; and

WHEREAS, the applicant notes that Use Group 2 is not permitted in an M1-1 zoning district and that 65 percent of the site is within the M1-1 district and 35 percent of the site is within the R7A (C2-4) district; as such, ZR § 77-11, cannot be employed to extend the R7A (C2-4) use regulations to the M1-1 portion of the site; and

WHEREAS, accordingly, the applicant seeks a use

variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lot's small size, shallow depth, and narrow width; (2) the adjacency of residential uses; (3) the district boundary, which divides the lot; and (4) the inability to merge the site with adjacent lots; and

WHEREAS, the applicant asserts that the site is small (2,250 sq. ft. of lot area), shallow (90 feet), and narrow (25 feet); and

WHEREAS, as such, the applicant asserts that it would be impractical to develop the site with a modern manufacturing use, which requires significantly larger floorplates than the site would yield; and

WHEREAS, the applicant notes that the site is the smallest and shallowest lot within a 400-foot radius in the subject M1-1 zoning district with frontage along Kent Avenue; and

WHEREAS, the applicant states that the infeasibility of establishing a manufacturing use on an undersized lot is compounded by the difficulties in locating such use on a site surrounded by residential neighbors; and

WHEREAS, in particular, the applicant states that the four adjacent buildings to the site and the building directly across the street contain residences; and

WHEREAS, the applicant states that the site is also uniquely burdened by being divided by the district boundary between an M1-1 zoning district (where the proposed use is not permitted as-of-right) and an R7A (C2-4) zoning district (where the proposed use is permitted as-of-right); and

WHEREAS, the applicant notes that while ZR § 77-11 typically affords relief for a split lot by allowing the use regulations of one district to extend to the other, such section would not allow for the proposed residential use, because less than 50 percent of the lot is within the R7A (C2-4) zoning district; and

WHEREAS, finally, the applicant asserts that the site is burdened by its inability to merge with another lot, which, when combined with its narrowness, shallowness, absence of an existing building, and split-lot condition, is unique in the subject M1-1 zoning district; and

WHEREAS, specifically, the applicant states that, of the 244 lots within the subject M1-1 zoning district, there are only 43 lots (including the site) that contain vacant or open parking uses; of these 43 lots, there are only 35 lots (including the site) with a lot width of 25 feet or less, 22 lots (including the site) with a lot depth of 90 feet or less, 19 lots (including the site) that have no potential to merge with the adjacent lots, and only two lots (including the site) that are split lots; and

WHEREAS, consequently, the applicant states that the site's unique physical conditions—its small lot size and shallow lot depth, the adjacency of residential uses, the split-lot condition, and the inability to merge—create an unnecessary hardship in developing the site in conformance with applicable regulations; and

WHEREAS, based upon the above, the Board finds that

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

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposed residential building with 2.2 FAR and the original proposal with 2.52 FAR, the applicant examined the economic feasibility of a two-story as-of-right manufacturing building with 2,250 sq. ft. of floor area; and

WHEREAS, the applicant concluded that the as-of-right scenario does not result in an acceptable rate of return; and

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

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

WHEREAS, the applicant states that the immediate area is characterized by a mix of medium density residential, commercial, and community facility uses, including a six-story mixed residential and commercial building and three-story mixed residential and commercial building to the south, a four-story residential building to the west, a three-story mixed residential and commercial building to the north, and a three-story residential building directly across the street; in addition, the applicant notes that there is a five-story school (PS 157) on the block, and a large park (Taaffe Playground) that occupies the majority of the block immediately to the west of the site; and

WHEREAS, the applicant states, as noted above, that the site has historically been occupied by residential uses and that, as such, the proposal would restore a viable use; and

WHEREAS, likewise, the applicant asserts that the area within a 400-foot radius of the site has limited industrial uses, and, therefore, a conforming use would be less appropriate than the proposal; and

WHEREAS, the Board agrees that the character of the area is predominantly residential, and it finds that the introduction of four dwelling units does not impact nearby conforming uses; and

WHEREAS, as to bulk, at hearing, the Board expressed concerns about the compatibility of the originally proposed building height, street wall location, and attic with the surrounding area; and

WHEREAS, in response, the applicant amended its proposal, lowering the building height from 53'-11" to 48'-

11", moving the street wall forward 5'-0" to align with the adjacent building's street wall, and removing the attic entirely, thereby reducing the proposed floor area from 5,680 sq. ft. (2.52 FAR) to 4,930 sq. ft. (2.2 FAR); and

WHEREAS, the applicant notes that the proposed building, as modified, complies with the floor area, height and setback regulations for an R6 zoning district; as such, it provides an appropriate transition from the higher bulk of the R7A (C2-4) zoning district along Myrtle Avenue to the three-story building to the north of the site, which has a height of approximately 30'-0"; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's small lot size, shallow lot depth, adjacency of residential uses, split-lot condition, and inability to merge; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617 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. 13BSA103K, dated February 28, 2014; and

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

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

WHEREAS, DEP reviewed and accepted the December 2013 Remedial Action Plan and the October 2012 site-specific Construction Health and Safety Plan; and

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

WHEREAS, DEP reviewed the applicant's air quality assessment and determined that no significant stationary, mobile, and industrial source air quality impacts to the

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proposed project are anticipated; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district, the construction of four-story residential building (Use Group 2), contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received "October 16, 2013"- Twelve (12) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a floor area of 4,930.2 sq. ft. (2.2 FAR), a building height of 48'-11", a rear yard depth of 33 feet, and four dwelling units, as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, March 4, 2014.

88-13-BZ
CEQR #13-BSA-111Q

APPLICANT – Lawrence M. Gerson, Esq., for Allied Austin LLC, owner; American United Company, LLC, lessee.

SUBJECT – Application March 14, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Title Boxing Club*) within an existing building. C2-3/R5D zoning district.

PREMISES AFFECTED – 69-40 Austin Street, south side of Austin Street, 299' east of intersection with 69th Avenue, Block 3234, Lot 150, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 20, 2013, acting on Department of Buildings ("DOB") Application No. 420803884, reads in pertinent part:

Proposed conversion of retail store into boxing center is not permitted as-of-right in a C2-3 (R5D) zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C2-3 (R5D) zoning district, the legalization of an existing physical culture establishment ("PCE") in a portions of the first floor of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, and then to decision on March 4, 2014; and

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

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

WHEREAS, the subject site is located on the south side of Austin Street, between 69th Avenue and 70th Avenue, within a C2-3 (R5D) zoning district; and

WHEREAS, the site has approximately 411 feet of frontage along Austin Street and approximately 42,773 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 81,269 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the PCE occupies 5,834 sq. ft. of floor area on the first floor of the building; and

WHEREAS, the applicant notes that the PCE has been in operation since June 1, 2013; and

WHEREAS, the PCE is currently operated as Title Boxing Club; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; the applicant states that massages will not be performed at the PCE; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, from 7:30 a.m. to 6:00 p.m.; and

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

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satisfactory; and

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

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA111Q, dated March 14, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located within a C2-3 (R5D) zoning district, the legalization of an existing physical culture establishment (“PCE”) in a portion of the first floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 3, 2013 ” – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on June 1, 2023;

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, March 4, 2014.

128-13-BZ

APPLICANT – Sheldon Lobel, PC, for Zev and Renee Marmustein, owner.

SUBJECT – Application May 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); side yards (§23-461(a)); less than the required rear yard (§23-47) and perimeter wall height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1668 East 28th Street, west side of East 28th Street 200' north of the intersection formed by East 28th Street and Quentin Road, Block 6790, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated April 16, 2013, acting on DOB Application No. 301408046, reads in pertinent part:

1. Proposed plans are contrary to ZR § 23-141(b), in that the proposed floor area ratio exceeds the maximum permitted;

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2. Proposed plans are contrary to ZR § 23-141(b), in that the open space provided is less than the minimum required;
3. Proposed plans are contrary to ZR § 23-141(b), in that the lot coverage proposed exceeds the maximum permitted;
4. Proposed plans are contrary to ZR § 23-461(a) in that the proposed enlargement increases the degree of non-compliance with respect to the minimum required side yards;
5. Proposed plans are contrary to ZR § 23-47, in that the proposed enlargement increases the degree of non-compliance with respect to the minimum required rear yard;
6. Proposed plans are contrary to ZR § 23-631(b), in that the proposed enlargement increases the degree of non-compliance with respect to the maximum permitted wall height; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, lot coverage, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, with a continued hearing on January 28, 2014, and then to decision on March 4, 2014; and

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

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of the original the application; and

WHEREAS, certain members of the surrounding community testified in opposition to this application (the "Opposition"), alleging that the proposed floor area (4,988 sq. ft. (1.0 FAR)) and absence of a side yard along the north side of the site (which was an extension of an existing zero lot line condition) were inconsistent with the character of the neighborhood; and

WHEREAS, in response, the applicant reduced the floor area from 4,988 sq. ft. (1.0 FAR) to 4,885 sq. ft. (0.98 FAR), eliminated the zero lot line condition, and provided a side yard with a minimum width of 3'-8¾", which the Opposition found acceptable; as a result, the Opposition withdrew its objection to the application; and

WHEREAS, the subject site is located on the west side of East 28th Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the site has a total lot area of 5,000 sq. ft. and is occupied by a single-family home with a floor area of 2,795 sq. ft. (0.56 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 2,795 sq. ft. (0.56 FAR) to 4,885 sq. ft. (0.98 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 72 percent to 62 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 28 percent to 38 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant seeks to maintain one existing, complying side yard with a width of 8'-3" and increase the width of the existing non-complying side yard from 0'-0" (at its narrowest point) to 3'-8¾" (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 28'-5¼" to 20'-0"; a rear yard with a minimum depth of 30'-0" is required; and

WHEREAS, finally, the applicant seeks to maintain and extend its existing, non-complying perimeter wall height of 22'-6⅛"; the maximum permitted perimeter wall height is 21'-0"; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal to or less than the height of the adjacent building's non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height (22'-6⅛") is less than the height of the adjacent building's non-complying perimeter walls facing the street (22'-8¼"), and the applicant submitted a survey in support of this representation; and

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

WHEREAS, in particular, the applicant represents that the proposed 0.98 FAR is consistent with the bulk in the surrounding area and notes that, in recent years, the Board has granted special permits for home enlargements on nearby streets (East 21st, East 22nd, and Avenue S) with FARs in excess of 1.0; and

WHEREAS, additionally, the applicant notes that a portion of the existing home is built to the north side lot line and the proposal includes the removal of that portion and the inclusion of a side yard with a width of 3'-8¾"; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor

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impair the future use and development of the surrounding area; and

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, lot coverage, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; on condition that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 18, 2014" – Twelve (12) sheets; and on further condition:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,885 sq. ft. (0.98 FAR), a minimum open space ratio of 62 percent, a maximum lot coverage of 38 percent, a minimum rear yard depth of 20'-0", side yards with minimum widths of 8'-3" and 3'-8¾", and a maximum perimeter wall height of 22'-6⅛", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 4, 2014.

234-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Dov Lipschutz, owner.

SUBJECT – Application August 16, 2013 – Variance (§72-21) for the enlargement of an existing two-family detached residence to be converted to a single-family home, contrary to minimum front yard (§23-45(a)); and less than the required rear yard (ZR §23-47). Special Permit (§73-621) for an enlargement which is contrary to floor area (ZR 23-141). R3-2 zoning district.

PREMISES AFFECTED – 1653 Ryder Street, aka 1651 Ryder Street, Located on the northeast side of Ryder Street between Quentin road and Avenue P, Block 7863, lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings ("DOB"), dated August 9, 2013, acting on DOB Application No. 320516811, reads in pertinent part:

1. FAR exceeds maximum permitted, contrary to ZR 23-141(b);
2. Proposed conditions increase the degree of non-compliance with respect to the required minimum front yard, contrary to ZR 23-45(a);
3. Proposed conditions violate required rear yard, contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 72-21 and 73-621, to permit, within an R3-2 zoning district, the conversion (from a two-family residence to a single-family residence) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio ("FAR"), front yard, and rear yard, contrary to ZR §§ 23-141, 23-45, and 23-47; and

WHEREAS, a public hearing was held on this application February 4, 2014, after due notice by publication in *The City Record*, and then to decision on March 4, 2014; and

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

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

WHEREAS, the subject site is an irregularly-shaped interior lot located on the east side of Ryder Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the site has 40 feet of frontage along Ryder Street and 3,855 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a two-story, two-family home with 1,985.41 sq. ft. of floor area (0.52 FAR), and an attic; and

WHEREAS, the applicant notes that the building has existing complying side yard widths of 5'-0" and 10'-10½", a complying rear yard with a depth of 30'-0", and a non-complying front yard ranging in depth from 9'-11" to 14'-1" (a minimum front yard depth of 15'-0" is required); and

WHEREAS, the applicant proposes to enlarge the existing cellar, first and second stories, and the attic of the building contrary to the FAR, front yard, and rear yard requirements, and increase the floor area from 1,985.41 sq. ft. (0.52 FAR) to 2,544.02 sq. ft. (0.66 FAR); the maximum permitted floor area is 1,927 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is

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available, resulting in a maximum permitted floor area of 2,313 sq. ft. (0.6 FAR); and

WHEREAS, the applicant also proposes to maintain a portion of its existing, non-complying front yard depth at 9'-11" and reduce a portion of its existing, non-complying front yard depth from 14'-1" to 12'-1" (a minimum depth of 15'-0" is required), and reduce its complying rear yard depth from 30'-0" to 24'-11" (a minimum depth of 30'-0" is required); and

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

WHEREAS, the applicant submitted the building's 1954 Certificate of Occupancy authorizing a two-family residence to demonstrate that the building existed as a residence well before June 20, 1989, which is the operative date within the subject R3-2 district; and

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

WHEREAS, ZR § 73-621 permits the enlargement of a residential building, provided that the proposed floor area ratio does not exceed 110 percent of the maximum permitted (0.66 FAR);

WHEREAS, the applicant represents that the proposed floor area ratio is 110 percent of the maximum permitted (0.6 FAR); and

WHEREAS, therefore, the Board finds that the proposed increase in floor area is permitted under ZR § 73-621; however, ZR § 73-621 is not available to enlarge the building contrary to the front and rear yard requirements; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to ZR § 72-21 for those portions of the proposal; and

WHEREAS, the applicant states that the irregular lot shape is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations; and

WHEREAS, the applicant states that the lot's shape is irregular, in that its rear lot line is diagonal, which creates a lot depth that varies from approximately 91 feet on the southeastern lot line to approximately 101 feet on the northwestern lot line; and

WHEREAS, the applicant asserts that such shape decreases the lot area available in the rear of the building, which contributed to the existing building being constructed closer to the front lot line and further into the required front yard, which, in turn, creates a practical difficulty enlarging the building in accordance with the front and rear yard requirements; and

WHEREAS, the applicant states that the lot shape is unique, and in support of this statement, submitted a study of the surrounding 24 blocks (approximately 900 sites); and

WHEREAS, the applicant represents that, according to the study, only two blocks out of 24 contain lots that share the site's diagonal rear lot line condition, and only 29 lots within those blocks have, as a result of their diagonal rear lot line, lot depths of 100 feet or less; and

WHEREAS, the applicant further distinguishes 23 of the 29 seemingly similar lots as follows: (1) 15 lots are overbuilt and cannot seek the same relief (a 10 percent FAR waiver under ZR § 73-621); (2) four lots are within .03 of the maximum permitted FAR and therefore cannot feasibly be enlarged; (3) two lots are corner lots without required rear yards; and (4) two have particularly wide frontages (61 feet and 80 feet), which mitigates the loss of space owing to their diagonal rear lot line; and

WHEREAS, consequently, the applicant states that only six lots out of 900 (less than one percent) nearby can be considered similar to the subject site; as such, the applicant asserts that the site's shape creates a unique practical difficulty in complying with the zoning regulations; and

WHEREAS, the applicant explored the feasibility of an as-of-right enlargement of the home; however, as noted above, such an enlargement would have to be accomplished entirely at the rear of the building and would result in a modest increase in floor area from 1,985.41 sq. ft. (0.52 FAR) to 2,313 sq. ft. (0.6 FAR); in contrast, the proposal allows for modest enlargements at the front and rear of the building; and

WHEREAS, accordingly, the applicant asserts that the lot shape creates practical difficulties in developing the site as-of-right; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board agrees that because of the site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that neither the proposed variance, nor the special permit will negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by low-density, detached or semi-detached, two- or three-story homes, with varying rear and side yard depths, and, typically, shallower front yard depths and setbacks; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant states that the proposal will maintain the existing minimum front yard depth of 9'-11" (albeit with a slight decrease in the non-complying front yard depth at the northern side of the lot from 14'-1" to 12'-1"), decrease its complying rear yard by approximately 5'-0", exceed the permitted FAR by less than ten percent and comply in all other respects (side yards, height, and lot coverage) with the R3-2 bulk regulations; and

WHEREAS, as to adjacent uses, the applicant states that the proposal maintains the existing complying side yards, and

MINUTES

therefore has no impact on the parcels directly north and south of the site; and while the majority of the enlargement is proposed at the rear of the building (its east side), the applicant notes that the nearest structures to the east are a swimming pool (on Lot 68) and a garage (on Lot 66); thus, the overall impact of the proposal on adjacent uses is minimal; and

WEHREAS, as to the proposed 0.65 FAR, the applicant notes that directly across the street, the homes on Lots 63 and 64 have 0.66 FAR and 0.75 FAR, respectively; and

WHEREAS, additionally, the applicant represents that there are 18 homes on an adjacent block along Ryder Street (Block 7862) with an FAR of 0.66 or greater, with 12 homes ranging from 0.72 FAR to 1.12 FAR; and

WHEREAS, at hearing, the Board directed the applicant to clarify the amount of floor area proposed in the attic; and

WHEREAS, in response, the applicant submitted a revised statement, which confirmed the location and amount of floor area proposed in the attic; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique conditions at the site; and

WHEREAS, the applicant asserts that the proposal is the minimum variance necessary to afford relief; and

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

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 72-21 and 73-621; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings ZR §§ 72-21 and 73-621, to permit, within an R3-2 zoning district, the conversion (from a two-family residence to a single-family residence) and enlargement of an existing residential building, which does not comply with the zoning requirements for FAR, front yard, and rear yard, contrary to ZR §§ 23-141, 23-45, and 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 19, 2014"-Twelve (12) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories and an attic, a maximum floor area of 2,544.02 sq. ft. (0.66 FAR), a front yard with a minimum depth of 9'-11", a rear yard with a minimum depth of 24'-11", and side yards with minimum widths of 5'-0" and 10'-10½", as per the BSA-approved plans;

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

THAT the approved plans will be considered approved

only for the portions related to the specific relief granted;

THAT significant construction will proceed in accordance with ZR §§ 72-23 and 73-70; and

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

Adopted by the Board of Standards and Appeals, March 4, 2014.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

64-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Chakkalo and Abdo Chakkalo, owners.

SUBJECT – Application February 11, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue, Block 7184, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

92-13-BZ & 93-13-BZ

MINUTES

APPLICANT – Rothkrug Rothkrug & Spector LLP, for FHR Development LLC, owner.

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings, contrary to required rear yard regulation (§23-47). R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

103-13-BZ

APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC,owner.

SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building, contrary to §42-10 zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256’ west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

130-13-BZ

APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

157-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.

SUBJECT – Application May 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1368 & 1374 East 23rd Street, west side of East 23rd Street, 180’ north of Avenue N, Block 7658, Lot 78 & 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 25, 2014, at 10 A.M., for decision, hearing closed.

163-13-BZ

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application May 30, 2013 – Special Permit (§73-44) to allow the reduction of parking spaces for the enlargement of a building containing Use Group 6 professional offices. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, 39th Avenue, east of College Pt. Boulevard, Block 4973, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

MINUTES

252-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eli Schron, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R-2 zoning district. PREMISES AFFECTED – 1221 East 22nd Street, east side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

270-13-BZ

APPLICANT – Eric Palatnik, P.C., for Margaret Angel, LLC, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 288 Dover Street, Dover Street, south of Oriental Boulevard, Block 8417, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

273-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for 321-23 East 60th Street LLC, owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the development of an eight-story residential building containing 28 dwelling units, contrary to use regulations (§32-10). C8-4 zoning district.

PREMISES AFFECTED – 321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit. Block 1435, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

281-13-BZ

APPLICANT – Joshua Rinesmith, Warshaw Burstein LLP for FC-Canal LLC, owner; 320 Canal Fitness Group, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building. C6-2A zoning district.

PREMISES AFFECTED – 350-370 Canal Street, premises is comprised of 3 properties located on the west portion of block 211 at the intersection of Canal Street and Church Street. Block 211, Lot(s) 3, 29, 7501. Borough of

Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

291-13-BZ

APPLICANT – Eric Palatnik, P.C., for 840-842 LLC, owner; Crunch LLC, lessee.

SUBJECT – Application October 22, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch LLC*) within a portion of an existing building. C8-2 zoning district.

PREMISES AFFECTED – 842 Lefferts Avenue, south side of Lefferts Avenue, approximately 262’ west of intersection of Utica Avenue and Lefferts Avenue, Block 1430, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a three-story, six-unit residential building, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on June 6, 2006, under Calendar No. 32-38-BZ and printed in Volume 91, Bulletin Nos. 23-24, is hereby corrected to read as follows:

32-38-BZ

APPLICANT – Steven M. Sinacori, Esq., for 88 Third Avenue Associates, owner.

SUBJECT – Application March 21, 2006 – Reopening for an amendment to the resolution to eliminate the twenty year (20) term for the change in occupancy from Manufacturing (UG17) to Office (UG6) in a four story and cellar building located in an R-6 zoning district, as adopted by the Board of Standards and Appeals on March 16, 1993.

PREMISES AFFECTED – 88 Third Avenue, west side of Third Avenue, between Bergen and Dean Streets, Block 197, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to eliminate the term of a previously granted variance; and

WHEREAS, a public hearing was held on this application on May 9, 2006, after due notice by publication in *The City Record*, and then to decision on June 6, 2006; and

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

WHEREAS, the subject premises is located on the west side of Third Avenue between Bergen and Dean Streets; and

WHEREAS, the lot is located within an R6 zoning district, and is surrounded primarily by residential uses, there are also some manufacturing uses in the vicinity; and

WHEREAS, the lot area is approximately 43,500 sq. ft. and is improved upon with an approximately 98,000 sq. ft., four-story building; and

WHEREAS, in 1938, the Board granted an application under the referenced calendar number to permit use of the site as a milk plant; and

WHEREAS, subsequently, in 1961, the Board approved a change of use in a portion of the building from milk plant to UG 17 manufacturing use; and

WHEREAS, most recently, on March 19, 1993, the Board, pursuant to ZR § 11-413, authorized a change of the UG 17 manufacturing use to UG 6 office use; and

WHEREAS, the term of the authorization was limited to 20 years, to expire on March 19, 2013; and

WHEREAS, the application is brought on behalf of

the New York City Human Resources Administration (HRA); and

WHEREAS, HRA occupies the first and second floors of the building and the third and fourth floors are currently vacant; and

WHEREAS, HRA intends to expand its operations to the third and fourth floors, which requires extensive renovations including the installation of an HVAC system, computer wiring, and new bathrooms; and

WHEREAS, HRA asserts that it has already invested more than \$6.5 million for renovations and plans to contribute another \$1 million; and

WHEREAS, HRA represents that its lender requires that there be no term limit on the authorization, in order to secure funding for the renovations; and

WHEREAS, the Board notes HRA's long-term commitment to the building; and

WHEREAS, upon review, the Board finds the requested elimination of the twenty-year term appropriate, provided that there is compliance with the conditions set forth below and in the prior resolutions.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 19, 1993, so that as amended this portion of the resolution shall read: "to eliminate the term of the previously granted change of use; *on condition*:

THAT any change in occupancy of the subject building shall require the prior approval of the Board;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Alt. No. 300349825)

Adopted by the Board of Standards and Appeals, June 6, 2006.

***The resolution has been corrected in the portion which read: "THAT any change in ownership or occupancy of the subject building shall require the prior approval of the Board;" now reads: "THAT any change in occupancy of the subject building shall require the prior approval of the Board;" Corrected in Bulletin No. 10, Vol. 99, dated March 12, 2014.**

BULLETIN

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March 19, 2014

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New Case Filed Up to March 11, 2014

41-14-BZ

21-37 Waverly Avenue, Located between Flushing Avenue and Park Avenue front both Washington and Waverly Avenues, Block 1874, Lot(s) 38, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-19) seeks proposed legalization of the existing religious based(Use Group 3) Yeshiva school. 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

APRIL 1, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 1, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

156-02-BZ

APPLICANT – Herrick Feinstein Lullaby Jennifer Dickson, for 8021 15th Avenue Corp., owner; JP Morgan Chase & Co., lessee.

SUBJECT – Application August 1, 2013 – Extension of Term (§11-411) of a previously approved variance which permitted the maintenance of a new and used car sales lot with an accessory office and parking, which expired on August 5, 2013: Amendment (§11-413) to permit the change in use to an accessory parking lot to an existing bank. R5B zoning district.

PREMISES AFFECTED – 964 65th Street, between Fort Hamilton Parkway and Tenth Avenue. Block 5750, Lot 49 (Tent 51). Borough of Brooklyn.

COMMUNITY BOARD #10BK

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of a previously approved Special Permit (§73-211) which permitted the reconstruction of an existing Auto Service Station (UG 16B which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough of Brooklyn.

COMMUNITY BOARD #12BK

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application January 2, 2014 – Amendment of a previously approved Variance (§72-21) which permitted construction of a 2- story and mezzanine, 2-family residential building that did not comply with §23-45(a) (front yard), the amendment seeks to permit construction of a 3-story, 3-family residential building. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.

COMMUNITY BOARD #5BK

COMMUNITY BOARD #5BK

ZONING CALENDAR

178-13-BZ

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) for an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

250-13-BZ

APPLICANT – Warsaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group. LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Fitness Center*) on the cellar, first and second floors. R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

275-13-BZ

APPLICANT – Warsaw Burstein, LLP, for Kedzkidz Realty LLC., owner; Antonaccio-Crous, LLC, lessee.

SUBJECT – Application September 26, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment with the existing building. M1-5 zoning district.

PREMISES AFFECTED – 404-406 Broadway, east side of Broadway south of its intersection with Canal Street in TriBeCa, Block 196, Lot 3. Borough of Manhattan.

COMMUNITY BOARD #1M

285-13-BZ

APPLICANT – Warsaw Burstein, LLP, for 495 Flatbush Ave, LLC, owner; 495 Flatbush Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*fitness center*) on the first and the second floors of the existing building. C8-6 zoning district.

PREMISES AFFECTED – 495 Flatbush Avenue, east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot 6.

CALENDAR

Borough of Brooklyn.

COMMUNITY BOARD #9BK

286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one story residential home contrary to front yard (ZR §23-45); side yard (ZR §23-161); floor area and lot coverage (ZR §23-141) and off street parking requirements (ZR §25-621(B)). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) the proposed college (UG 3))(MCNY) to occupy 816 square feet of floor area at the proposed second floor which falls within a manufacturing (M-1) zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 11, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

331-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (*Century 21*). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum permitted floor area. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway. Block 6911, Lot 6 & 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in a C5-5 zoning district within the Special Lower Manhattan District the enlargement of an existing commercial building contrary to floor area regulations and waived the requirement to relocate two adjacent subway entrances in connection with the enlargement; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

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

WHEREAS, the subject site spans the full length of the east side of Church Street, between Cortlandt Street and Dey Street, within a C5-5 zoning district, within the Special Lower

Manhattan District; and

WHEREAS, the site comprises Lots 3 and 6, has approximately 170 feet of frontage along Cortlandt Street, approximately 215 feet of frontage along Church Street, approximately 128 feet of frontage along Dey Street, 38,178 sq. ft. of lot area, and is located across the street from the World Trade Center site; and

WHEREAS, Lot 3 is occupied by a 34-story commercial building (the “Tower Building”) and Lot 6 is occupied by a five-story commercial building (the “Bank Building”); together, the buildings have 595,882 sq. ft. of floor area (15.6 FAR); and

WHEREAS, the applicant represents that Century 21 Department Store (“Century 21”) occupies the entirety of the Bank Building and floors one through six of the Tower Building, as well as the two buildings adjacent to the Tower Building on Block 63, Lot 1 (“10-12 Cortlandt Street”); and

WHEREAS, on February 15, 2005, under the subject calendar number, the Board granted a variance to permit: (1) a 4,583 sq.-ft. enlargement of the existing second-floor mezzanine of the Century 21 store in the Bank Building, while an equal amount of floor area was simultaneously retired via deed restriction from 10-12 Cortlandt Street; and (2) a waiver of the requirement to relocate two adjacent subway entrances in connection with the enlargement, contrary to ZR §§ 31-122 and 91-43; and

WHEREAS, the applicant now requests an amendment to permit the construction of a partial sixth floor atop the Bank Building, which will increase the floor area on the site by 4,622 sq. ft. from 595,882 sq. ft. (15.6 FAR) to 600,504 sq. ft. (15.73 FAR), and increase the height of the Bank Building from 71'-0" to 83'-0"; as in the previous grant, this enlargement will: (1) be offset by a deed restriction retiring 4,622 sq. ft. of floor area recorded against 10-12 Cortlandt Street; and (2) require a waiver of the requirement (ZR § 91-43) to relocate the two subway entrances adjacent to the site; and

WHEREAS, the applicant states that Century 21 will use the new sixth floor as an event space, which will allow for: (1) private exhibitions of new vendor merchandise or Century 21-curated merchandise; (2) presentations and functions hosted by Century 21 for their buyers and vendors, including catered dinners or luncheons; and (3) a designated area for executive meetings and sales force conferences; and

WHEREAS, the applicant asserts that the event space is critical to Century 21’s remaining competitive in the shrinking department store market, and in support of this statement, the applicant provided an analysis that reflects that all other large New York City department stores have private event space; and

WHEREAS, the applicant notes that the neighborhood is characterized by high-density mixed commercial and residential uses and that a department store is entirely consistent with such uses; and

WHEREAS, as for the enlargement’s impact upon adjacent properties, the applicant states that it is minimal; specifically, the applicant notes that the only adjacent building

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on the block—the 34-story Tower Building—is partially occupied by Century 21 and otherwise occupied by commercial uses; as such, the modest increase in height will have no impact; and

WHEREAS, as to the required waiver for the relocation of two subway entrances, the applicant states that, as in the original grant, the costs of such relocation far exceed the benefits derived from the enlargement that triggers the relocation requirement; indeed, Century 21’s most valuable selling space—at the cellar and first floor—would be reduced in order to accommodate the subway work; and

WHEREAS, in addition, the applicant asserts that the subway relocation requirement set forth in ZR § 91-43 was intended for major renovations of Lower Manhattan buildings and that minor increases in floor area to accommodate existing uses—the proposed enlargement increases the FAR by 0.13—were not contemplated despite the use of the defined term “enlargement”; and

WHEREAS, at hearing, the Board noted that the deed restriction retiring the floor area at 10-12 Cortlandt Street required under the prior grant had not yet been recorded; accordingly, the Board directed the applicant to record the deed restriction retiring 9,205 sq. ft. of floor area (which represents 4,583 sq. ft. of floor area from the original grant and 4,622 sq. ft. requested under this application); additionally, the Board directed the applicant to clarify the amount of available floor area at 10-12 Cortlandt Street and to clarify the impact of the proposed sixth floor on the Tower Building’s windows; and

WHEREAS, in response, the applicant represented that the deed restriction would be recorded upon approval of this application; and

WHEREAS, as to the amount of available floor area at 10-12 Cortlandt Street, the applicant states that 10-12 Cortlandt Street has a maximum permitted floor area of 92,955 sq. ft., 20,412 sq. ft. of which are built and 9,205 sq. ft. of which are to be retired by the deed restriction discussed above, leaving 63,337 sq. ft. available for development; and

WHEREAS, as to whether the proposed sixth floor would obstruct any windows at the Tower Building, the applicant submitted a letter from the project architect stating that it would not; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated February 15, 2005, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received February 11, 2014’- Five (5) sheets; and *on further condition*:

THAT the Tower Building and the Bank Building will have a maximum of 600,504 sq. ft. of floor area (15.73 FAR);

THAT the Bank Building will have a maximum height of 83’-0”;

THAT prior to DOB’s issuance of a permit, a deed restriction providing for the permanent and irrevocable retirement of 9,205 sq. ft. of floor area as to 10-12 Cortlandt Street will be executed and recorded, and then submitted to DOB, with a copy of same to the Board’s Executive Director for placement in the case file;

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

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

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

Adopted by the Board of Standards and Appeals, March 11, 2014.

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG16 auto repair shop with sales, which expired on June 8, 2010; Waiver of the Rules. C2-2(R6B), R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, south side of Northern Boulevard, 350 East of intersection of Northern Boulevard, and 206th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184’ east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

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ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

166-12-A

APPLICANT – NYC Department of Buildings.
OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.
SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for adjourned hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.
SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7-2 zoning district. R7B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for adjourned hearing.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.
SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of Buildings’ to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.
PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for deferred decision.

215-13-A

APPLICANT – Anthony A. Lenza , owner
SUBJECT – Application July 16, 2013 – Appeal challenging denial of the Department of Building’s determination regarding floor area (§12-10 (12) (ii)). R1-1 zoning district.
PREMISES AFFECTED – 300 Four Corners Road, Block 894, Lot 235, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

192-13-BZ

CEQR #13-BSA-163M

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.
SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, decision of the Manhattan Borough Commissioner, dated June 10, 2013, acting on Department of Buildings Application No. 121330611, reads:

Proposed Residential UG 2 is not permitted in M1-5 District; contrary to ZR 42-10; and

WHEREAS, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014 and February 4, 2014, and then to decision on March 11, 2014; and

WHEREAS, the site and surrounding area had site and

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neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the Greenwich Village Society for Historic Preservation and the Greenwich Village Community Task Force provided testimony in opposition to the application, primarily citing concerns about the establishment of a unique hardship; and

WHEREAS, the site is located on the east side of West Street between Clarkson Street and Leroy Street, within an M1-5 zoning district; and

WHEREAS, the site has 200 feet of frontage on West Street, 176 feet of frontage on Leroy Street, 106 feet of frontage on Clarkson Street, and a lot area of approximately 28,362 sq. ft.; and

WHEREAS, the site is occupied with five buildings ranging in height from one to three stories, with commercial and industrial use including a 24-hour cabaret lounge, an automobile repair service, a vacant diner, a construction materials sales and hardware center, a vacant automobile laundry and oil change facility with outdoor parking spaces, and a shipping and receiving office; and

WHEREAS, the applicant states that all buildings on the zoning lot will be demolished in anticipation of construction; and

WHEREAS, the applicant proposes to construct a 12-story building with 141,815 sq. ft. of floor area (5.0 FAR), 77 residential units (UG 2) (4.97 FAR), ground floor retail (UG 6) (0.03 FAR), and 12 accessory parking spaces in the cellar; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the history of use and development of the site; (2) poor subsurface conditions including deep bedrock, soft soils, and shallow ground water; and (3) the location within a flood zone; and

WHEREAS, as to the history of development of the site and the existing conditions, the applicant states that the site is at the end of a series of mixed and residential uses and is the last low density underdeveloped site located along West Street within the M1-5 zoning district not developed with residential or mixed use buildings; and

WHEREAS, the applicant notes that the existing buildings, which are occupied by a mix of uses, do not conform to the current Building Code and can be classified as obsolete; and

WHEREAS, the applicant states that an 1879 map reflects that a coal yard and iron works were formerly located on the zoning lot and, later, a motor freight station, smelting and iron works, an automotive repair shop, machine shops, and building materials establishments; and

WHEREAS, as to the soil conditions, the applicant notes that the historic industrial use of the site has resulted in the contamination of the soils that will require extensive clean-up

and increased construction costs; and

WHEREAS, the applicant states that during Super Storm Sandy, the site experienced significant flooding and waste oil and petroleum contaminated oil were required to be removed pursuant to the jurisdiction of the New York State Department of Environmental Conservation; and

WHEREAS, the applicant states that the site also contains multiple recognized environmental conditions ("RECs") as described in the Phase I Environmental Assessment; and

WHEREAS, accordingly, the applicant represents that there are significant premium costs associated with the long history of contamination at the site; and

WHEREAS, as to the subsurface conditions, the applicant notes that the site is at the western edge of the original Manhattan shoreline, which (1) comprises urban fill that is considered unsuitable for load-bearing materials; and (2) has bedrock and subsoil conditions that require a deeper and more extensive pile foundation system; and

WHEREAS, the applicant states that the western portion of the block is located outboard of the historic shoreline (not part of the original outline of Manhattan) on reclaimed land, with the original Manhattan shoreline located at the northeast corner of the site; and

WHEREAS, the applicant asserts that if the site were two blocks north, it would be entirely inboard of the historic shoreline and not subject to the same hardship; and

WHEREAS, the applicant represents that the poor subsurface conditions at the site, including loose soil, shallow groundwater level, and the location within the 100-year flood plain lead to premium construction costs; and

WHEREAS, the applicant states that the urban fill is found about ten to 18 feet below the existing grade and comprises brown and gray coarse to fine sand with varying amounts of silt and gravel; and

WHEREAS, the applicant states that below the fill is an approximately 6'-0" layer of high plasticity clay at depths between 10.5 and 16.5 feet; and

WHEREAS, the applicant states that bedrock was encountered between 90 and 94 feet below grade and groundwater was measured at a depth of 11.5 to 18 feet below grade and about three to five feet below mean sea level; and

WHEREAS, in support of these assertions, the applicant submitted an engineering report that details the subsurface conditions and distinguishes it from nearby sites; and

WHEREAS, the applicant states that the soil and subsurface conditions require a deep pile foundation system and, due to the proximity of nearby buildings, deep piles must be drilled into caissons; and

WHEREAS, the applicant states that the high water table requires the utilization of dewatering and waterproofing measures for a development to resist the effects of hydrostatic pressure; and

WHEREAS, the applicant states that the location primarily within Flood Zone A requires higher base planes, limited uses below grade, and extra waterproofing; and

WHEREAS, the applicant also notes that regulatory

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changes in response to the flooding caused by Super Storm Sandy create new development obligations and requirements that impact development within the newly-adopted FEMA flood zones; and

WHEREAS, the applicant notes that the new flood zone regulations require that a building be raised to the base flood elevation of the new FEMA flood zone maps; and

WHEREAS, for the subject site, the elevation requires the ground floor to be raised five to six feet above the existing grade; and

WHEREAS, as to the uniqueness of the noted conditions, the applicant submitted a technical memorandum prepared by the project engineer, which analyzed seven sites along West Street from Leroy Street (the northern street bordering the subject site) to West 12th Street; and

WHEREAS, the applicant notes that the sites are primarily not in the same zoning district as the subject site, but they are located on West Street and have been recently developed with residential uses; and

WHEREAS, the applicant states that of the seven sites, bedrock was encountered at depths of 80 to 100 feet, comparable to the site, with the exception of 400 West 12th Street (“Superior Ink”) where the bedrock extended on part of the site to approximately 140 feet below grade; and

WHEREAS, however, the applicant notes that three sites are located inboard of the historic shoreline (150 and 165 Charles Street and 176 Perry Street); two sites are located outboard of the historic shoreline (423 West Street and 400 West 12th Street); one is located at the edge (173 Perry Street) and one is split (Morton Square); and

WHEREAS, the applicant states that the three sites that are inboard of the historic shoreline have soil conditions composed of urban fill, underlain by glacial deposits underlain by bedrock; and

WHEREAS, the applicant states that the sites inboard of the historic shoreline lack the presence of organic river deposits and have been (or are currently being) developed with shallow mat foundations; and

WHEREAS, the applicant states that the four sites located outboard, on the edge, or split by the historic shoreline have soil composition similar to the other sites but with the presence of organic river deposits; and

WHEREAS, the applicant represents that the outboard sites have all been developed with deep pile foundations due to the unsuitability of the soil composition primarily due to the presence of organic river deposits; and

WHEREAS, the applicant notes that Morton Square, divided by the historic shoreline and the only site analyzed located within the M1-5 zoning district is also encumbered by the PATH tunnel within Morton Street, which puts additional constraints on the kind of foundation system required with the addition of required drilled piles to protect the integrity of the cast iron encased tunnel; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with

the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will realize a reasonable return; and

WHEREAS, the applicant provided an initial feasibility study analyzing two scenarios: (1) an as-of-right hotel building; and (2) the proposed mixed use residential/commercial building with 5.0 FAR; and

WHEREAS, the applicant’s financial analysis reflected that only the initial proposal would realize a reasonable rate of return; and

WHEREAS, the Board directed the applicant to also analyze (1) a lesser variance alternative with 4.0 FAR and (2) an as-of-right office alternative; and

WHEREAS, the applicant’s analysis concluded that neither supplemental alternative would realize an acceptable rate of return; and

WHEREAS, the revised financial analysis reflects that only the current proposal provides the applicant with a reasonable rate of return; and

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

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

WHEREAS, the applicant notes that the site is bordered by three streets: West Street, a major arterial highway; Leroy Street, a west-moving narrow local street; and Clarkson Street, an east-moving narrow local street providing one of the few signalized left turn exits off of the southbound West Street; and

WHEREAS, the applicant notes that opposite the site across West Street is the Hudson River Park and Pier 40, which includes a mix of offices, recreational fields, and parking; and

WHEREAS, the applicant notes that north of the site is Morton Square, a mixed-use primarily residential building occupying the entire block; and

WHEREAS, the applicant asserts that Morton Square defines the beginning of a residential and mixed-use corridor extending along West Street north to the Meatpacking District at Little West 12th Street; and

WHEREAS, the applicant notes that within the M1-5 zoning district is a Special Mixed Use District – MX6, which pairs a residential R7X zoning district with the underlying M1-5 zoning district for a portion of the two blocks northeast of the site; this area includes apartment buildings and commercial art galleries; and

WHEREAS, the applicant states that adjacent to the site

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to the east is an at-grade parking facility on Leroy Street and wrapping around Clarkson Street to Washington Street is a Federal Express parking facility; and

WHEREAS, the applicant states that in the immediate vicinity are a mix of uses including (1) south of the site across Clarkson Street, the St. John's Terminal building, a four-block long terminal and warehouse building; and (2) a UPS trucking and shipping terminal; and

WHEREAS, the applicant notes that the M1-5 district extends along West Street one block south, but that block is fully occupied by the St. John's Terminal Building; and

WHEREAS, the applicant states that south and east of the site is the newly-adopted mixed-use Special Hudson Square District, where infill residential use is permitted within the manufacturing area; and

WHEREAS, accordingly, the applicant asserts that the proposed residential use, with 77 units, an accessory parking garage at the cellar level, and retail use on a portion of the first floor is compatible with the nearby uses within the far West Village on West Street; and

WHEREAS, the applicant asserts that the current condition of the zoning lot lacks cohesiveness and is not reflective of the context of the surrounding area; and

WHEREAS, as to the building form, the applicant notes that the proposed 12-story building will have a height of approximately 155 feet with a curvilinear façade, occupying the full West Street block front and extending down Leroy Street and Clarkson Street; and

WHEREAS, the applicant states that the design with its undulating wall without a setback is intended to help activate the street level of the building and engage with the sidewalk; and

WHEREAS, the applicant notes that the proposed 5.0 FAR is consistent with the bulk regulations in the M1-5 zoning district and the nearby MX6 district; and

WHEREAS, the applicant states that the buildings in the area range in height from one-, two-, and three-story buildings between Christopher Street and Charles street to the Westbeth with a height of 185 feet; and

WHEREAS, the applicant notes that Morton Square on the other side of Leroy Street has 14 stories and a height of 155 feet; and

WHEREAS, the applicant notes that the as-of-right hotel building could have a height of 233 feet; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 77 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.0 and all other bulk parameters are consistent with zoning district regulations; and

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

WHEREAS, the Board finds that, consistent with ZR §

72-21(d), the hardship herein was not created by the owner or a predecessor in title but is rather due to the inherent conditions of the site; and

WHEREAS, the applicant represents that the proposed use and bulk, which is consistent with the bulk for a conforming use, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief, as set forth in 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 an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA163M, dated June 27, 2013; and

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

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

WHEREAS, DEP recommends that an (E) Designation for hazardous materials be placed on the subject property, with the understanding that the New York City Office of Environmental Remediation may request additional data collection; and

WHEREAS, DEP recommends that the (E) Designation also encompass noise to ensure tracking and enforcement of the noise attenuation requirements; and

WHEREAS, the Board has obtained (E) Designation number E-332 from the Department of City Planning; and

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

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

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

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1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, the construction of a 12-story mixed residential/commercial building with ground floor retail use and 12 accessory parking spaces, which is contrary to ZR § 42-10; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received March 10, 2014”– Thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12 stories; 77 residential units; a total floor area of 141,815 sq. ft. (5.0 FAR); a maximum height of 155 feet; and a maximum of 12 accessory parking spaces;

THAT the development of the site is subject to the conditions of (E) Designation E-332;

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 substantial construction will be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, March 11, 2014.

236-13-BZ

CEQR #14-BSA-021M

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and mezzanine floors of the existing building, and Special Permit (§73-52) to allow the fitness center use to extend 25’-0” into the R8 portion of the zoning lot. C6-2 & R8 zoning district.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275’ east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 21, 2014, acting on Department of Buildings (“DOB”) Application No. 104325776, reads in pertinent part:

Proposed use as a physical culture establishment . . . is contrary to ZR 32-10;

Proposed extension of physical culture establishment use into R8 portion of zoning lot is contrary to ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District, the operation of a physical culture establishment (“PCE”) in portions of the first floor and mezzanine level of an existing 12-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R8 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped zoning lot located on the north side of West 55th Street between Ninth Avenue and Tenth Avenue, partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District; and

WHEREAS, the site has approximately 225 feet of frontage along West 55th Street and 24,603 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the proposed PCE will occupy portions of the first floor (20,412 sq. ft. of floor area), and mezzanine level (1,777 sq. ft. of floor area), for a total PCE floor area of 22,189 sq. ft.; and

WHEREAS, the applicant notes that the Board has exercised jurisdiction over the site since July 25, 2006, when, under BSA Cal. No. 46-06-BZ, it granted a special permit pursuant to ZR § 73-36 to permit the operation of a PCE unaffiliated with the applicant for a term of ten years, to expire on July 25, 2016; and

WHEREAS, the applicant represents that although the prior grant did not authorize extension of the PCE into the R8 portion of the lot, it is believed that such extension occurred; in any event, the prior PCE has since vacated the space; and

WHEREAS, the applicant states that the proposed PCE will operate as a Planet Fitness; and

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WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C6-2 portion of the site 24 feet into the R8 portion of the site; and (2) pursuant to ZR § 73-36, obtain a special permit for the operation of the PCE in portions of the first floor and mezzanine of the existing commercial building at the site; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issue of single ownership, the applicant submitted documents reflecting the history of ownership of the subject site and adjoining sites showing that the zoning lot was in single ownership prior to December 15, 1961; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 22,594.5 sq. ft. of the site's 24,603 sq. ft. of lot area (92 percent) is located within a C6-2 zoning district; and

WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R8 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is occupied with a portion of the existing building that is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R8 district is at the rear of the site and does not have access to a public street; therefore, developing the R8 portion of the site with a community facility or residential use is infeasible; and

WHEREAS, the applicant notes that, under Article V, commercial use is permitted as a non-conforming use within the R8 portion of the site; however, the construction of a non-PCE commercial use is constrained for the same reasons that as-of-right uses are constrained: the R8 portion of the site is landlocked and, accordingly, undesirable to most commercial uses; as such, providing the costly improvements to operate as an independent commercial space—partitions, mechanicals, and a wheelchair lift for accessibility—would not be economically feasible since the space would have to be offered at significantly discounted rents; and

WHEREAS, accordingly, absent the requested extension of the PCE into the residential space, a substantial portion of the first floor of the building would be unusable

and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R8, for a permitted use; and

WHEREAS, as to the extension's effect on the surrounding area, the applicant states that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by high-density commercial and residential uses; further, the proposed PCE will be entirely within the existing building; and

WHEREAS, the applicant also notes that the PCE does not have any windows on entrances facing the residential district, and that commercial and industrial uses have existed at the site for approximately 100 years; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C6-2 zoning district portion of the lot into the R8 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-52; and

WHEREAS, turning to the findings for ZR § 73-36, the applicant represents that the services at the PCE include facilities for group training, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be 24 hours per day and seven days per week; and

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

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

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

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

WHEREAS, at hearing, the Board questioned whether the mezzanine was required to be made accessible for persons with certain physical disabilities; and

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible because the amenities offered on that level are available on one or more accessible levels of the PCE; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings

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pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA021M, dated August 6, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C6-2 zoning district and partially within an R8 zoning district, within the Special Clinton District, the operation of a PCE in portions of the first floor and mezzanine level of an existing 12-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R8 portion of the zoning lot, contrary to ZR § 77-11; *on condition* that all work will substantially conform to drawings filed with this application marked “December 23, 2013” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

THAT substantial construction will be completed in

accordance with ZR § 73-70;

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

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

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

Adopted by the Board of Standards and Appeals, March 11, 2014.

274-13-BZ

CEQR #14-BSA-045M

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2013, acting on DOB Application No. 320782630, reads, in pertinent part:

Proposed physical culture establishment use is not permitted in a C1-3 zoning district, per ZR 32-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment (“PCE”) within the second story of a two-story residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in the *City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

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WHEREAS, Community Board 10, Brooklyn, recommends approval of the application, provided that the hours of operation are limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the subject site is located on the west side of Third Avenue, between 79th Street and 80th Street, within a C1-3 (R6B) zoning district within the Special Bay Ridge District; and

WHEREAS, the site has approximately 60 feet of frontage along Third Avenue and 6,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 11,500 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the applicant notes that the first floor of the building is occupied by a grocery store and the second floor is vacant; and

WHEREAS, the applicant notes that the building was constructed in or around 1931 and that the site has been subject to the Board's jurisdiction since July 24, 1959, when, under BSA Cal. No. 398-58-BZ, it granted a variance permitting a factory contrary to use regulations; in addition, later that year, on September 29, 1959, under BSA Cal. No. 399-58-A, the Board granted an appeal waiving the live load requirements for the second story; and

WHEREAS, the applicant states that the manufacturing use remained on the second story until around 1972, when the manufacturer vacated the space, and remained vacant until around 2000, when a martial arts studio leased the space and occupied it until March 2012; and

WHEREAS, the applicant acknowledges that a martial arts studio is a PCE and concedes that a variance was not obtained for the operation of the studio; however, the applicant represents that both the building owner and the martial arts studio were unaware that a martial arts studio is considered a PCE and that PCEs are not permitted within a C1-3 (R6B) district; and

WHEREAS, the applicant now seeks a variance to operate the subject PCE, which will be known as H.I.T. Factory, occupy 5,400 sq. ft. of floor area on the second story, and operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the second floor in conformance with applicable regulations: (1) the second floor's configuration, depth, and size; and (2) its absence of street-level exposure; and

WHEREAS, the applicant states that the historic configuration, depth, and size of the second floor—the characteristics that made it suitable for historic manufacturing use—render it unsuitable for modern conforming uses; and

WHEREAS, specifically, the applicant states that the second floor has a large open floorplate, which would require utilities upgrades and partition construction in order to accommodate a modern business or professional office, at significant cost; and

WHEREAS, the applicant also asserts that the large size (approximately 6,000 sq. ft.) and depth (approximately 92

feet) of the second floor make residential use infeasible; and

WHEREAS, in particular, the applicant states that the second floor would be able to provide a rear yard depth of only ten feet, which is 20 feet less than the minimum required for habitable rooms; accordingly, all dwelling units must use the Third Avenue frontage of the building for required light and ventilation, which effectively prohibits the rear of the building from being converted to residences; and

WHEREAS, the applicant also states that the lack of light and ventilation owing to the building's depth would further decrease its attractiveness to modern business or professional offices, which prefer natural light; and

WHEREAS, similarly, the second floor's absence of street-level exposure makes it undesirable for local retail and service establishment uses, which rely primarily on pedestrian visibility and convenience of access in order to attract customers; as such, the rent for the second floor must be heavily discounted in order to offset the limitations of the space; and

WHEREAS, the applicant notes that the second floor's unattractiveness to tenants is evidenced by its 28-year vacancy, which, as noted above, began in 1972 and ended when a martial arts studio (a PCE) began occupying the space in 2000; and

WHEREAS, to support its claim of unique hardship, the applicant provided an area study of the 92 buildings within 600 feet of the site; and

WHEREAS, based on the study, only one other building has a second floor commercial use: 7819 Third Avenue, which has a Rite-Aid store on the first floor and "Tutor Time," an infant child care and preschool, on the second floor; and

WHEREAS, however, the applicant asserts that the Tutor Time building is distinguishable from the site, in that it has significantly more lot area (approximately 9,600 sq. ft.) and is located on a corner, where light and ventilation are available for residential or modern office uses; and

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

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in addition to the proposal, the applicant examined the economic feasibility of constructing a conforming office for a single user on the second floor; and

WHEREAS, the applicant concluded that the offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return; and

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

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return; and

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

WHEREAS, the applicant states that a PCE occupied the building (albeit without the required variance, as noted above) from approximately 2000 until 2012, and that this application has received letters of support from various community organizations as well as the community board; and

WHEREAS, the applicant represents that the surrounding community is characterized by low- to medium-density mixed residential and commercial uses, with many small business that are geared to local residents, and that the proposed PCE is consistent with such uses and will provide a valuable service; and

WHEREAS, as to the PCE's impact, the applicant represents that although light music may be played during workouts, the building's double concrete walls and extra padding will provide ample sound attenuation for both the neighboring buildings, and the grocery store use at the first floor; and

WHEREAS, in addition, consistent with the community board's request, as noted above, the hours of operation for the PCE will be limited to daily, from 7:00 a.m. to 10:00 p.m.; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the history of manufacturing use on the second floor and the building's depth; and

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

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

WHEREAS, the Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on March 11, 2024; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; 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. 14BSA045M, dated September 23, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment ("PCE") within the second story of a two-story residential building, contrary to ZR § 32-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 23, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 2024;

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

THAT all signage at the site will be limited to C1 zoning district regulations;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the hours of operation for the PCE will be limited to seven days per week, from 7:00 a.m. to 10:00 p.m.;

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

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on March 11, 2016;

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

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

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

THAT DOB must ensure compliance with all other

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

Adopted by the Board of Standards and Appeals, March 11, 2014.

54-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

211-12-BZ

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for deferred decision.

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for adjourned hearing.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single-family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for continued hearing.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

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COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for adjourned hearing.

228-13-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

246-13-BZ

APPLICANT – Rothkurg Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

276-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Adams Tower Limited Partnership, owner; Fastbreak, owner.

SUBJECT – Application September 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fastbreak*). C1-9 zoning district.

PREMISES AFFECTED – 1629 First Avenue aka 1617 First Avenue and 341 East 84th Street, west side First Avenue between East 84th & East 85th Street, Block 1547, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

290-13-BZ

APPLICANT – Herrick, Feinstein LLP, by Arthur Huh, for Church Avenue Development LLC, owner; New Fitness Holdings LLC, lessee.

SUBJECT – Application October 21, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*) located on the second floor of a four-story building. C4-4A zoning district.

PREMISES AFFECTED – 2244 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

306-13-BZ

APPLICANT – Lewis E. Garfinkel for Howard Berglas, owner.

SUBJECT – Application November 20, 2013 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-141); and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3766 Bedford Avenue, west side of Bedford Avenue, 350' south of corner of Bedford Avenue and Avenue P, Block 6787, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

*CORRECTION

These resolutions adopted on January 28, 2014, under Calendar Nos. 131-13-A & 132-13-A and printed in Volume 99, Bulletin Nos. 4-5, is hereby corrected to read as follows:

131-13-A & 132-13-A

APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.
SUBJECT – Application May 10, 2013 – Proposed construction of a residence not fronting on a legally mapped street, contrary to General City Law Section 36. R2 & R1-1 (SHPD) zoning districts.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Block 615, Lots 210 and 205, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated May 6, 2013 and April 24, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 read, in pertinent part:

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

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 22, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, City Councilmember Debbie Rose submitted testimony in opposition to the application, citing fire safety concerns; and

WHEREAS, certain members of the surrounding community, including a community group known as the Serpentine Art & Nature Commons, Inc. (the “Opposition”), provided written and oral testimony in opposition to the application citing the following concerns: (1) the slope of the roadway and its distance will interfere with firefighting operations; (2) the proposal is contrary to a private agreement

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(a November 1950 restrictive covenant) concerning the site and other nearby parcels; and (3) the Board previously denied a GCL § 36 waiver application concerning the site in part because the Fire Department disapproved the application; and

WHEREAS, the subject site is located on Cecilia Court off of Howard Avenue, partially within an R1-1 zoning district and partially within an R2 zoning district, within the Special Hillside Preservation District; and

WHEREAS, the applicant states that the site does not front a mapped street, but has access to Howard Avenue, a mapped street, via a private utility and access easement formerly known as Howard Lane and now known as Cecilia Court, which was recorded on December 12, 1950 but does not appear on the City Map; the applicant notes that Cecilia Court has a width of 16 feet, a slope of approximately 12.2 percent and that the distance between the proposed building and Howard Avenue along Cecilia Court is 550 feet; and

WHEREAS, the applicant states that the site is vacant; however, it has been the subject of a series of Board and City Planning actions over the years; specifically, on February 28, 1989, under BSA Cal Nos. 26-86-A, 27-86-A and 28-86-A, the Board denied applications filed pursuant to GCL § 36 to permit construction of three single-family residences not fronting on a mapped street; on January 6, 1998, under BSA Cal. No. 209-07-A, the Board granted an application filed pursuant to GCL § 36 to permit the construction of one single-family residence not fronting on a mapped street; in 2001, the Department of City Planning approved an authorization application filed under ULURP No. N000523 ZAR to allow the construction of a single-family residence on former Lot 210; and

WHEREAS, the applicant now seeks to construct two, three-story, single-family residences contrary to GCL § 36; and

WHEREAS, by letter dated August 26, 2013, the Fire Department stated that the residences are proposed on a private roadway having a substandard width, contrary to the Fire Code, but that it would not object to their construction provided that the residences are fully-sprinklered in accordance with New York City Building Code § 903 and the Fire Interim guidelines, which state that the Fire Department will grant a modification for construction of new occupancy group R-3 (one-family and two-family) dwellings with modified fire apparatus access if the building is designed, constructed, and maintained in accordance with New York City Building Code § 903; and

WHEREAS, on September 3, 2013, the applicant submitted a revised site plan to address the request of the Fire Department; and

WHEREAS, at hearing, the Board raised concerns regarding the slope of the roadway and the firefighting apparatus access; and

WHEREAS, in response, the applicant submitted a letter, a survey, and a site plan, which contends that: (1) the existing roadway was constructed prior to the current Fire Code requirements and Special Hillside Preservation District regulations and has served as access for emergency services to

the existing homes fronting the roadway for many years; and (2) the Fire Department firefighting manual indicates that the maximum roadway slope for a tower ladder is 15 percent, which is more than the existing mean slope of 12.2 percent and significantly more than the proposed slope of 7.3 percent for the proposed cul-de-sac; therefore, the applicant asserts that either slope is within the acceptable slope for firefighting purposes; and

WHEREAS, by letter dated October 22, 2013, the Opposition raises concerns regarding the information provided by the applicant as to the length and slope of the grade; and

WHEREAS, by letter dated October 28, 2013, the Fire Department informed the Board that, based on additional information regarding the site, it now objected to the proposed roadway because it included grades substantially in excess of ten percent, contrary to Fire Code § 503.2.7; and

WHEREAS, following a series of discussions and letters among the parties, the Fire Department approved the revised proposal, subject to the following conditions: (1) the residences will be fully-sprinklered; (2) a Fire Code-compliant apparatus turnaround will be installed; (3) two new fire hydrants will be installed; (4) a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed; and (5) the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line; and

WHEREAS, in response to the issues identified by the Opposition regarding Cecilia Court, which is a private easement, the applicant acknowledged that it would be required to seek authorization from the other parties to the 1950 restrictive covenant in order to implement certain Fire Department conditions; and

WHEREAS, on January 15, 2014, the applicant submitted a revised site plan that was reviewed and approved by the Fire Department; and

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

Therefore it is Resolved, that the decisions of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawings filed with the application marked "Received January 15, 2014" (2) sheets; and *on further condition*

THAT the proposal will comply with all applicable zoning district requirements and all other applicable laws, rules, and regulations;

THAT all required approvals from the Department of City Planning will be obtained prior to the issuance of building permits;

THAT the building will be fully sprinklered in accordance with BSA-approved plans;

THAT a Fire Code-compliant apparatus turnaround will

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be installed;

THAT two new fire hydrants will be installed;

THAT a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed;

THAT the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line;

THAT there will be "No Parking" along the entire length of the easement;

THAT the conditions requested by the Fire Department be implemented before the Temporary Certificate of Occupancy and Certificate of Occupancy are issued;

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

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

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

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

Adopted by the Board of Standards and Appeals on January 28, 2014.

The resolutions have been amended. Corrected in Bulletin No. 11, Vo. 99, dated March 19, 2014.

*CORRECTION

The resolution adopted on January 28, 2014, under Calendar No. 292-13-BZ and printed in Volume 99, Bulletin Nos. 4-5, is hereby corrected to read as follows:

292-13-BZ

CEQR #14-BSA-060K

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 21, 2013, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

1. Proposed Floor Area exceeds the maximum allowed pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-22
2. Proposed Open Space is less than minimum required pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-23
3. Proposed Lot Coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-24
4. Proposed Front Yard is less than minimum required pursuant to ZR Sections 113-12, 23-45 and does not comply with planting requirements in ZR Section 23-451
5. Proposed Level of Front Yard is higher than level permitted pursuant to ZR Section 23-42
6. Proposed Front Yard does not comply with landscaping regulations per ZR 113-30
7. Proposed Rear Yard is less than rear yard required pursuant to ZR Sections 113-11b and 24-36
8. Proposed Side Yards are less than required pursuant to ZR Sections 113-11, 23-464
9. Proposed new building exceeds maximum Height and Setback requirements pursuant to

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ZR Sections 113-11, 23-631d, 24-17, 24-593, 23-633a2, 77-28

10. Proposed Side and Rear Yard Setbacks are less than required pursuant to ZR Sections 113-11 and 23-662
11. Proposed development provides less than required parking spaces pursuant to ZR Sections 113-561, 25-31, 25-35
12. Proposed clerestory exceeds max height for permitted obstructions pursuant to ZR Sections 113-11 and 23-62(l); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-141(b), 23-17, 23-45, 23-451, 23-464, 23-631(a), 23-62(1), 23-633(a)2, 23-662, 24-11, 24-17, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-561 and 23-42; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2013, and then to decision on January 28, 2014; and

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

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

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about the bulk and potential impact on light and air and potential noise impact associated with the building's mechanicals; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the "Synagogue"), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, on October 16, 2012, the Board granted a variance application pursuant to ZR § 72-21, under BSA Cal. No. 168-11-BZ, to permit the construction of a four-story synagogue on Block 7109, Lot 50 (formerly Lots 48 and 50) (the "Prior Variance"); the Prior Variance reflected

a building with a maximum floor area of 20,461 sq. ft. (2.3 FAR), a maximum wall height of 60'-0" and a total height of 62'-4", a minimum open space of 1,866 sq. ft., and a maximum lot coverage of 6,968 sq. ft. (79 percent); and

WHEREAS, the applicant represents that construction pursuant to the Prior Variance has not commenced; and

WHEREAS, the applicant represents that subsequent to the Prior Variance, the Congregation purchased the adjacent Lot 56, which resulted in a redesign of the building and requires a new approval for the synagogue on combined Lots 50 and 56 that more fully meets the needs of the growing Congregation; and

WHEREAS, the merged lot has a total lot area of 14,840 sq. ft.; it was formerly occupied by a two-story home on former Lot 50 and a two-story home on former Lot 48, both of which were unoccupied and sealed at the time of purchase, and the newly-acquired Lot 56 is currently occupied by a two-story residence; and

WHEREAS, the inclusion of Lot 56 increases the lot area of the zoning lot from 8,840 sq. ft. to 14,840 sq. ft., which allows for construction of a larger synagogue building with a more accommodating layout; and

WHEREAS, the applicant proposes the following parameters: two/three stories; a floor area of 22,314 sq. ft. (1.5 FAR) (a maximum community facility floor area of 21,815 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.47 FAR is permitted); a lot coverage of 63 to 72 percent (maximum permitted lot coverage ranges from 45/55 to 60 percent); an open space of 28 to 36 percent (the minimum required open space ranges from 38 to 45 percent); a maximum wall height of 47'-10" and a maximum total height of 62'-0" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); the clerestory (skylight over the third floor) to a height of 57'-3", which is 9'-5" above the roof of the three-story front portion of the building (exceeds the maximum height of a permitted obstruction); the proposed level of the front and rear yards 3'-4" above the permitted curb level; and no parking spaces (a minimum of 23 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a new building height of 70'-0"; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the building height to 59'-5" at the roof ridge in the R5 corner portion of the lot and to 62'-0" in the R6A interior lot portion of the site; and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a side yard with a width of 8'-0" on the corner portion adjacent to the neighbor on Ocean Parkway; and a rear yard with a depth of 30'-0" on the L-shaped portion of the lot within the subdistrict, but

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no front yard in the interior portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) a social hall, men's mikvah, and a kitchen at the cellar level; (2) the main men's sanctuary and Bet Midrash (accessory prayer room) and a Brit Milah at the first floor; (3) the women's sanctuary balcony, a kitchenette (warming pantry), boys' and girls' minyans (accessory prayer room) on the second floor; and (4) a young adult minyan, a board room, and two offices at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would have the following restrictions: a total height of 49'-0", a front yard of 30'-0" along Ocean Parkway, a front yard of 10'-0" along Avenue U, and a side yard of 13'-10"; it would allow for a social hall of only 3,090 sq. ft.; a main men's sanctuary of 1,250 sq. ft. (to accommodate 208 people); and a main women's sanctuary of 645 sq. ft. (to accommodate 120 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that only one Bet Midrash could be provided, instead of three, and a men's mikvah space could not be provided; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk on certain days for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 143'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation

has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, as far as the changes from the proposal associated with the Prior Variance and the current proposal, the applicant states that the current proposal decreases the relief sought for FAR from 2.3 to 1.5 (1.47 FAR is the maximum permitted), open space, and lot coverage; and

WHEREAS, the applicant asserts that the proposed more uniform floor plate allows for a more functional floor layout and better circulation between the social hall, kitchen, and accessory storage; and

WHEREAS, further, the applicant notes that the modified proposal will allow for a total occupancy of 329 people in the social hall, rather than 221 people as approved by the Prior Variance; the current proposal also allows for a larger men's mikvah to be located at the cellar level rather than the first floor, as approved by the Prior Variance; and

WHEREAS, the applicant states that Jewish Law prescribes that congregants face east while praying, thus, the circular shape and downward sloping angle of the main sanctuary is designed in such a way to observe this religious requirement while also increasing the floor area from the main sanctuary previously approved, which was located on the second floor; and

WHEREAS, the applicant notes that the new first floor design allows for a Bet Midrash (accessory prayer room) and a Brit Milah room, which are critical spaces for an Orthodox synagogue but could not be accommodated in the smaller building approved through the Prior Variance; and

WHEREAS, the applicant states that now the women's sanctuary balcony is on the second, rather than third floor and has an increase in occupancy of 31 people from 192 to 223 people and that the new design allows for three prayer rooms for young people; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

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WHEREAS, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition; and the requirements for mechanical space, which contribute to the hardship at the site; and

WHEREAS, the applicant acknowledges that the Congregation created the irregular L-shape by merging two adjacent lots (former Lots 50 and 48), but that this lot area is critical to providing adequate space for a synagogue building with sufficient size to meet the programmatic needs; and

WHEREAS, further, the applicant notes that absent the lot merger, the 130'-0" depth and 18'-0" width of the easternmost portion of the site fronting on Avenue U presents unique physical conditions which support the request for waivers; and

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

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, specifically, the applicant states that there are eight buildings with a height of 62'-0" or greater within its study area; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the former homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side

lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 8'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, the applicant also notes that unlike in the Prior Variance, no portion of the current proposal is located in the R5 (Special Ocean Parkway Subdistrict) portion of the site located to the rear of the adjacent homes; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 143'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, in response to concerns the Board raised about the planting requirement along Ocean Parkway, the applicant increased the percentage of yard plantings from 41 percent to 50.1 percent; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to questions raised about the proposed emergency generator, the applicant responded that it will only be used in the event of an emergency (and subject to a test for functioning once per month) and the sound level will be similar to existing sound levels in the surrounding neighborhood; and

WHEREAS, the applicant also notes that it proposed baffling with a height of 12'-0", which is the minimum height to adequately buffer the HVAC equipment on the roof, thus, lowering the height is not feasible; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet

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the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14BSA060K, dated October 23, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR ZR §§ 23-141(b), 23-17, 23-45, 23-451, 23-464, 23-631(a), 23-62(1), 23-633(a)2, 23-662, 24-11, 24-17, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-561 and 23-42; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 3, 2013" – Seventeen (17) sheets; and

on further condition:

THAT the building parameters will be: two/three stories; a maximum floor area of 22,314 sq. ft. (1.5 FAR); a maximum wall height of 47'-10" and total height of 62'-0"; a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot; and a maximum lot coverage of 63 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the BSA-approved plans;

THAT sound attenuation measures be installed and maintained as reflected on the BSA- approved plans;

THAT landscaping be maintained as reflected on the BSA-approved plans;

THAT any change in control or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

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

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

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

THAT construction will proceed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

The resolution has been amended. Corrected in Bulletin No. 11, Vo. 99, dated March 19, 2014.

BULLETIN

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- 178-99-BZ 8973/95 Bay Parkway, Brooklyn
- 186-96-BZ 145-21/25 Liberty Avenue, Queens
- 246-01-BZ 35-11 Prince Street, Queens
- 197-05-BZ 813-815 Broadway, Manhattan
- 369-05-BZ 908 Clove Road, Staten Island
- 98-13-A 107 Haven Avenue, Staten Island
- 266-07-A 1602-1610 Avenue S, Brooklyn
- 80-11-A, 84-11-A,
 85-11-A & 103-11-A 335, 333, 331, 329 East 9th Street, Manhattan
- 110-13-A 120 President Street, Brooklyn
- 164-13-A 307 West 79th Street, Manhattan
- 296-13-A 280 Bond Street, Brooklyn
- 307-13-A &
 308-13-A 96 & 100 Bell Street, Staten Island
- 64-13-BZ 712 Avenue W, Brooklyn
- 76-13-BZ 176 Oxford Street, Brooklyn
- 92-13-BZ &
 93-13-BZ 22 and 26 Lewiston Street, Staten Island
- 157-13-BZ 1368 & 1374 East 23rd Street, Brooklyn
- 282-13-BZ 556 Columbia Street, aka 300 Bay Street, Brooklyn
- 293-13-BZ 78-04 Conduit Avenue, Brooklyn
- 62-12-BZ 614/618 Morris Avenue, Bronx
- 77-12-BZ 91 Franklin Avenue, Brooklyn
- 299-12-BZ 40-56 Tenth Avenue, Manhattan
- 347-12-BZ 42-31 Union Street, Queens
- 160-13-BZ 1171-1175 East 28th Street, Brooklyn
- 177-13-BZ 134 Langham Street, Brooklyn
- 207-13-BZ 177 Hastings Street, Brooklyn
- 213-13-BZ 3858-60 Victory Boulevard, Staten Island
- 253-13-BZ 66-31 Booth Street, Queens
- 254-13-BZ 2881 Nostrand Avenue, Brooklyn
- 268-13-BZ 2849 Cropsy Avenue, Brooklyn
- 318-13-BZ 74 Grand Street, Manhattan
- 34-14-BZ &
 498-83-BZ 2131 Hylan Boulevard, Staten Island

Correction246

Affecting Calendar Numbers:

- 331-04-BZ 26 Cortlandt Street, Manhattan
- 78-13-BZ 876 Kent Avenue, Brooklyn
- 127-13-A 332 West 87th Street,, Manhattan
- 128-13-BZ 1668 East 28th Street, Brooklyn
- 234-13-BZ 1653 Ryder Street, aka 1651 Ryder Street, Brooklyn
- 274-13-BZ 7914 Third Avenue, Brooklyn

DOCKETS

New Case Filed Up to March 25, 2014

42-14-BZ

783 Lexington Avenue, Lexington Avenue between 61st and 62nd Street, Block 1396, Lot(s) 22, Borough of **Manhattan, Community Board: 8**. Special Permit (§73:36) to operate a Physical Culture Establishment (Lush Cosmetics) located on the cellar, first and second floor of a five story building in a C1-8 zoning district. C1-8 district.

43-14-A

242 West 76th Street, South Side of West 76th Street, 112 feet West of Broadway, between Broadway and West End Avenue, Block 1167, Lot(s) 55, Borough of **Manhattan, Community Board: 7**. Extension of time to obtain a Class B Certificate of Occupancy to legalize a 120 Hotel units as provided in recent legislation under Chapters 225 and 566 of the Laws of New York 2010. R8B district.

44-14-BZ

92 Laight Street, Block bounded by Laight Street, Washington Street, West Street, and Vestry Street., Block 218, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73:36) to permit the operation of a Physical Culture Establishment(PCE) on the first floor of the existing building which is located within a C6-3A & C6-2A zoning districts. C6-3A &C6-2A district.

45-14-BZ

337 99th Street, 99th Street, between 3rd and 4th Avenue, Block 6130, Lot(s) 43, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-622) to enlarge an existing semi-detached two story dwelling in a residential zoning district(R4-1) and to vary the floor area ratio requirements of the Zoning Resolution and to convert the one family home into a two family home. R4-1 district.

46-14-BZ

252/60 Atlantic Avenue, Southeast corner of intersection of Atlantic Avenue and Boerum Place, Block 181, Lot(s) 1, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73:36) to allow the physical culture establishment (Blink Fitness) within portions of a new commercial building C2-4(R6-A) DB 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

APRIL 8, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 8, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

457-56-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Medow-"The Shop" 148-152L.P., owner.

SUBJECT – Application November 19, 2013 – Application to extend term of variance permitting accessory parking of motor vehicles, customer parking, and loading and unloading in conjunction with adjacent factory building in an R6B zoning district.

PREMISES AFFECTED – 152-154 India Street, Southern side of India Street, 150 ft. east of intersection of India Street and Manhattan Avenue. Block 2541, Lot 12, Borough of Brooklyn

COMMUNITY BOARD #1BK

192-96-BZ

APPLICANT – Sheldon Lobel, PC, for 1832 Realty LLC, owner.

SUBJECT – Application January 7, 2014 – Amendment of a previously approved Variance (§72-21) which permitted a large retail store (UG 10) contrary to use regulations which expires on September 23 2022. The application seeks to eliminate the term. C1-2/R5 zoning district.

PREMISES AFFECTED – 1832 86th Street, aka 1854 86th Street; 1-29 Bay Street, 2-6 Bay 20th Street, located on the southwest side of 86th Street spanning the entire block frontage between Bay 19th St and Bay 20th Street. Block 6370, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #11BK

160-00-BZ

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

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

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

COMMUNITY BOARD #13Q

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq. of Kramer Levin Naftalis & Frankel LLP, for Central Synagogue, owner.

SUBJECT – Application February 26, 2014 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the expansion of a UG4 community use facility (Central Synagogue) which expired on February 23, 2014. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, North side of East 55th Street, between park and Lexington Avenue, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

33-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Quentin Road Development LLC, owner.

SUBJECT – Application February 13, 2014 – Appeal challenging a Department of Building's Determination that the provisions of ZR 113-11 require the application of an equivalent residential FAR for the proposed community facility uses in a C4-2 zoning district, C8-2 (OP). C4-2 (OP) Zoning District.

PREMISES AFFECTED – 902 Quentin Road, Southeast corner of intersection of Quentin Road and East 9th Street. Block 6666, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ZONING CALENDAR

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of the existing physical culture establishment (The Physique) on the basement level of a building. C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

233-13-BZ

APPLICANT – Law office of Fredrick A. Becker, for Kayvan Shadrour, owner.

SUBJECT – Application August 12, 2013 – Special Permit (§73-622) for an enlargement of an existing single family residence contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 2413 Avenue R, North side of

CALENDAR

Avenue R between East 24th Street and Bedford Avenue.
Block 6807, Lot 48. Borough of Brooklyn.
COMMUNITY BOARD #15BK

302-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Claret Commons Condominium, owner; Peloton, lessee.
SUBJECT – Application November 15, 2013 – Special Permit (§73-36) to allow physical culture establishment (PCE) “Peloton Fitness”. C6-3X zoning district.
PREMISES AFFECTED – 140 West 23rd Street, S/S West 23rd Street between 6th and 7th Avenues. Block 798, Lot 7503. Borough of Manhattan.
COMMUNITY BOARD #4M

305-13-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza, LLC, owner; Whitestone Fitness D/B/A Dolphin Fitness, lessee.
SUBJECT – Application November 20, 2013 – Special Permit (§73-36) to allow physical culture establishment (PCE) “Dolphin Fitness”. M1-1 zoning district.
PREMISES AFFECTED – 30-50 Whitestone Expressway, Bounded by Ulmer Street to the north, Whitestone Expressway to the East and 31st Avenue to the south. Block 4363, Lot 100. Borough of Queens.
COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 25, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

923-77-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for
1899-1905 McDonald Avenue Associates, LLC, owner.

SUBJECT – Application November 14, 2013 – Extension of
Term of a previously approved Variance (§72-21) which
permitted a one-story manufacturing building which expired
on May 31, 2013. R5 (OP) zoning district.

PREMISES AFFECTED – 1905 McDonald Avenue, east
side of McDonald Avenue, 105 ft. south of Quentin Road,
Block 6658, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the
Rules of Practice and Procedure, a reopening, and an
extension of term for the continued operation of a
manufacturing use (Use Group 17) on a site within an R5
zoning district, within the Special Ocean Parkway District,
which expired on May 31, 2013; and

WHEREAS, a public hearing was held on this
application on February 4, 2014, after due notice by
publication in *The City Record*, with a continued hearing on
March 4, 2014, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is an interior lot located on
the east side of McDonald Avenue, between Quentin Road
and Woodside Avenue, within an R5 zoning district, within
the Special Ocean Parkway District; and

WHEREAS, the site has 6,326 sq. ft. of lot area and is
occupied by a one-story manufacturing building with 6,043 sq.
ft. of floor area (0.96 FAR); and

WHEREAS, the Board has exercised jurisdiction over
the site since May 31, 1978, when, under the subject calendar
number, the Board granted a variance permitting the

construction of a one-story manufacturing building within an
R5 zoning district, contrary to use regulations and for a term
of 15 years, to expire on May 31, 1993; and

WHEREAS, on March 8, 1994, the Board amended the
grant to permit the construction of a mezzanine within the
building and extended the term for ten years, to expire on May
31, 2003; and

WHEREAS, most recently, on March 30, 2004, the
Board extended the term of the grant for ten years, to expire
on May 31, 2013; and

WHEREAS, the applicant now requests an extension of
the term of the grant for ten years; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the
Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant
to: (1) remove the materials that are being stored outside of
the building; and (2) confirm that the signage complies with
the C1 district regulations; and

WHEREAS, in response, the applicant submitted: (1)
photographs showing the removal of the improperly-stored
materials; and (2) a signage analysis demonstrating
compliance with the C1 district regulations; and

WHEREAS, the Board has reviewed the application and
has determined that this application is appropriate to grant,
with certain conditions.

Therefore it is Resolved, that the Board of Standards and
Appeals waives the Rules of Practice and Procedure, reopens
and amends the resolution, as adopted on May 31, 1978, so
that as amended this portion of the resolution will read: “to
grant an extension of the variance for a term of ten years from
the prior expiration, to expire on May 31, 2023, *on condition*
that any and all work will substantially conform to the
previously-approved BSA drawings; and *on further condition*;

THAT the term of the variance will expire on May 31,
2023;

THAT the above condition will be listed on the
certificate of occupancy;

THAT an amended certificate of occupancy will be
obtained by March 25, 2015;

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

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

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

(DOB App. No. 320756801)

Adopted by the Board of Standards and Appeals, March
25, 2014.

MINUTES

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs, Inc., owner.

SUBJECT – Application November 7, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 Eating and Drinking establishment (*The Townhouse*) which expired on July 9, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 9, 2003; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 234 East 58th Street, south side of East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of an eating and drinking establishment (Use Group 6) on a site within an R8B zoning district, which expired on July 9, 2010, and an extension of time to obtain a certificate of occupancy, which expired on January 9, 2003; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 4, 2014, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is an interior lot located on the south side of East 58th Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has 3,015 sq. ft. of lot area and is occupied by a six-story mixed residential and commercial building with 13,650 sq. ft. of floor area (4.5 FAR); and

WHEREAS, the applicant notes that portions of the cellar and first floor of the building are occupied by an eating and drinking establishment known as “The Townhouse Bar,” which has been in operation for more than 20 years; and

WHEREAS, the Board has exercised jurisdiction over the site since July 9, 1985, when, under the subject calendar number, the Board granted a variance to permit the conversion of portions of the cellar and first story of an existing mixed residential and commercial building from showrooms (cellar) and apartments (first floor) to an eating and drinking establishment (Use Group 6) within what was then an R8 zoning district, contrary to use regulations and for a term of 15 years, to expire on July 9, 2000; and

WHEREAS, the grant was amended and extended over the years, most recently on January 9, 2001, when the Board extended the term for ten years, until July 9, 2010; a condition of the grant was that a new certificate of occupancy would be obtained by January 9, 2003; and

WHEREAS, accordingly, the applicant now requests an extension of the term of the grant for ten years and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) notify the tenants within the building of the application; and (2) confirm that the musical entertainment performed at the establishment is within the parameters of Use Group 6; and

WHEREAS, in response, the applicant submitted: (1) proof that the tenants were notified; and (2) an amended statement clarifying that there is not a set time or a cover charge for its musical performances; in addition, the applicant notes that the establishment’s capacity is below 200 persons; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, as adopted on July 9, 1985, so that as amended this portion of the resolution will read: “to grant an extension of the variance for a term of ten years from the prior expiration, to expire on July 9, 2020, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received November 7, 2013’ - Five (5) sheets; and *on further condition*:

THAT the term of the variance will expire on July 9, 2020;

THAT the occupancy of the establishment will not exceed 200 persons;

THAT the above condition will be listed on the certificate of occupancy;

THAT an amended certificate of occupancy will be obtained by March 25, 2015;

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

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

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

MINUTES

799-89-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1470 Bruckner Boulevard Corp., owner.

SUBJECT – Application September 24, 2013 – Extension of Term of a previously approved Variance (ZR 72-21) for the continued operation of a UG 17 Contractor's Establishment (*Colgate Scaffolding*) which expired on December 23, 2013. C8-1/R6 zoning district.

PREMISES AFFECTED – 1460-1470 Bruckner Boulevard, On the South side of Bruckner Blvd between Colgate Avenue and Evergreen Avenue. Block 3649, Lot 27 & 30. Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a variance authorizing a contractor's establishment (Use Group 17) on a site partially within a C8-1 zoning district and partially within an R6 zoning district, which expired on December 23, 2013; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 4, 2014, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site spans the south side of Bruckner Boulevard between Colgate Avenue and Evergreen Avenue, and is located partially within a C8-1 zoning district and partially within an R6 zoning district; and

WHEREAS, the site is occupied by two one-story industrial buildings occupied as a contractor's establishment (Use Group 17) and accessory at-grade parking; and

WHEREAS, the site has been subject to the Board's jurisdiction since July 25, 1950, when, under BSA Cal. No. 380-50-BZ, the Board granted a variance to permit, in a residence district, the construction and maintenance of a building on Lot 30 for storage and sale of automobile parts and automobiles, an accessory office, and an automobile repair shop; on July 21, 1953, the Board granted a variance to permit, in a residence district, the construction and maintenance of a building on Lot 27 for an automobile repair shop with painting and welding; and

WHEREAS, subsequently, around 1989, one owner took control of the lots and began using them together as a contractor's establishment (Use Group 17), and on July 13, 1993, the Board granted a variance legalizing the consolidation and the use for a term of ten years, to expire

on July 13, 2003; and

WHEREAS, by resolution dated December 23, 2003, the Board granted an extension of the term of the variance for ten years, to expire on December 23, 2013; and

WHEREAS, the applicant now seeks to extend the term of the variance authorizing the contractor's establishment for ten years; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove barbed wire from the fence surrounding the site; (2) submit photographs showing the removal of debris from the parking areas on the site; and (3) confirm that the accessory signage was limited to Colgate Avenue and Bruckner Boulevard; and

WHEREAS, in response, the applicant submitted photographs showing the removal of the barbed wire and debris; in addition, the applicant confirmed that accessory signage was limited to Colgate Avenue and Bruckner Boulevard and would not be placed along Evergreen Avenue; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 13, 1993, so that as amended the resolution reads: "to grant an extension of the variance for a term of ten years, to expire on December 23, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received September 24, 2013- Five (5) sheets; and *on further condition*:"

THAT this grant will be limited to a term of ten years, to expire on December 23, 2023;

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

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

287-01-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Related Broadway Development LLC, owner; TSI West 94, LLC dba New York Sports club, lessee.

SUBJECT – Application November 20, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment, which expired on April 16, 2011; Waiver of the Rules. C4-6/R8 zoning district.

PREMISES AFFECTED – 2523-2525 Broadway, west side of Broadway between West 93rd Street and West 94th Street, Block 1242, Lot 10, 55, Borough of Manhattan.

COMMUNITY BOARD #7M

MINUTES

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an amendment, and an extension of term for a physical culture establishment (“PCE”), which expired on April 16, 2011; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is a corner lot with frontages along West 94th Street, West 95th Street, and Broadway, partially within a C4-6A zoning district and partially within an R8 zoning district, within a Special Enhanced Commercial District; and

WHEREAS, the site is occupied by a 21-story mixed residential and commercial building; and

WHEREAS, the PCE is located on portions of the cellar (8,723 sq. ft. of floor space) and first (800 sq. ft. of floor area) and second floors (6,987 sq. ft. of floor area) for a total PCE floor space of 16,060 sq. ft.; and

WHEREAS, the PCE is operated entirely within the C4-6A portion of the site; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, on April 16, 2002, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, on a site partially within a C4-6A zoning district and partially within an R8 zoning district, within a Special Enhanced Commercial District, the legalization of an existing PCE for a term of nine years, to expire on April 16, 2011; and

WHEREAS, the applicant now seeks an amendment regarding the hours of operation and an extension of the term of the PCE special permit for ten years; and

WHEREAS, as to the hours of operation, the applicant noted that the operator has changed the hours of operation from Monday through Thursday, from 6:00 a.m. to 11:00 p.m., Friday, from 6:00 a.m. to 9:00 p.m. and Saturday and Sunday, from 9:00 a.m. to 7:00 p.m. to Monday through Thursday, from 5:00 a.m. to 12:00 a.m., Friday, from 5:00 a.m. to 10:00 p.m., Saturday, from 7:00 a.m. to 10:00 p.m., and Sunday, from 8:00 a.m. to 10:00 p.m.; and

WHEREAS, at hearing, the Board directed the applicant

to clarify whether any residential units are located directly above the PCE and to note on the plans the sound attenuation measures that have been installed; and

WHEREAS, in response, the applicant confirmed that no residential units are located directly above the PCE and submitted amended plans showing the existing sound attenuation measures; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 16, 2002, so that as amended the resolution reads: “to grant the noted modification to the PCE’s hours of operation and to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that the use will substantially comply with the drawings filed with this application marked ‘Received November 20, 2013’- (6) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on April 16, 2021;

THAT the hours of operation will be limited to Monday through Thursday, from 5:00 a.m. to 12:00 a.m., Friday, from 5:00 a.m. to 10:00 p.m., Saturday, from 7:00 a.m. to 10:00 p.m., and Sunday, from 8:00 a.m. to 10:00 p.m.;

THAT any massages will be performed only by New York State licensed massage professionals;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application May 17, 2013 – Extension of Term of a previously approved Variance (§72-21) for the construction of an automotive service station (UG 16B) with accessory convenience store which expired on January 28, 2013; Waiver of the rules. C1-1/R3X (SRD) zoning district. PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta Lane, Block 7734, Lot 13 & 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a variance to permit, on a site within a C1-1 (R3X) zoning district, the operation of an automotive service station (Use Group 16B) with an accessory convenience store, which expired on January 28, 2013; and

WHEREAS, a public hearing was held on this application on February 22, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 4, 2014, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is located on the southeast corner of Hylan Boulevard and Page Avenue, within a C1-1 (R3X) zoning district; and

WHEREAS, on January 28, 2003, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with an accessory convenience store; and

WHEREAS, on May 22, 2007, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, which expired on May 22, 2011; the Board granted an additional extension of time on September 20, 2011, to expire on September 20, 2015; and

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

WHEREAS, the applicant notes that there are no proposed changes to the BSA-approved plans; however, a new application number is required at DOB due to the delay in commencing construction under the original application number; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure *reopens* and *amends* the resolution, dated January 28, 2003, so that as amended the resolution reads: “to permit an extension of the term of the variance for an additional ten years, to expire on January 28, 2023”; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received February 26, 2014’ - Six (6) sheets; and *on further condition*:

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

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

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

(DOB Application No. 520046539)

Adopted by the Board of Standards and Appeals, March 25, 2014.

823-19-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Minzer, owner.

SUBJECT – Application April 20, 2012 – Amendment (§§ 11-412 and 11-413) of a previously approved variance which permitted a one story warehouse (UG 16). The application seeks to construct an as-of-right two-story community facility (UG 4) atop the warehouse and reduce the warehouse space to accommodate 13 required accessory parking spaces for the proposed community facility use. R5 zoning district.

PREMISES AFFECTED – 1901 10th Avenue, southeast corner of East 19th Street and 10th Avenue, Block 890, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

960-67-BZ & 116-68-BZ

APPLICANT – Akerman LLP By Steven Sinacori for 40 CPS Associates, LLC, owner.

SUBJECT – Application December 26, 2013 – Amendment of two previously approved variances (§72-21) to allow the merger of the zoning lots and the transfer of development rights from 36 to 40 Central Park South. R10-H zoning district.

PREMISES AFFECTED – 36 & 40 Central Park South, South side of Central Park South between 6th and 5th Avenues. Block 1274, Lot(s) 6, 11, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

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

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for adjourned hearing.

546-82-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pasquale Carpentire, owner; Ganesh Budhu, lessee.

SUBJECT – Application June 20, 2013 – Extension of term of previously granted variance for the continued operation of a non-conforming open public parking lot which expired on June 14, 2013. R7-A zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, bounded by 88th Avenue to its north, 150th Street to its east, 148th Street to its west, 89th Avenue to its south, Block 9693, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

178-99-BZ

APPLICANT – Eric Palatnik, P.C., for Saltru Associates Joint Venture, owner.

SUBJECT – Application November 30, 2012 – Amendment (§§72-01 & 72-22) of a previously granted variance (§72-21) which permitted an enlargement of an existing non-conforming department store (UG 10A). The amendment seeks to replace an existing 7,502 sq. ft. building on the zoning lot with a new 34,626 sq. ft. building to be occupied by a department store (UG 10A) contrary to §42-12. M3-1 zoning district.

PREMISES AFFECTED – 8973/95 Bay Parkway, 1684 Shore Parkway, south side of Shore Parkway, 47/22' west of Bay Parkway, Block 6491, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over April 29, 2014, at 10 A.M., for continued hearing.

186-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (UG 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over April 29, 2014, at 10 A.M., for continued hearing.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application October 16, 2013 – Amendment of a previously approved Special Permit (§73-36) for a physical culture establishment (*Bodhi Fitness Center*). The amendment seeks to enlarge the PCE space by 3,999 sq. ft. M1-1, C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application February 11, 2014 – Extension of Time to Complete Construction of a previously approved variance (§72-21) permitting an 11-story residential building with commercial on the ground floor, contrary to bulk regulations, which expired on January 12, 2014. C6-1 district.

PREMISES AFFECTED – 813-815 Broadway, west side of Broadway, 42' south of East 12th Street, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Flatland 3706 Real Estate, LLC, owner.

SUBJECT – Application February 7, 2014 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to construct a four-story multiple dwelling, which expires on October 17, 2014. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Bard and Tyler Avenues, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

98-13-A

APPLICANT – Eric Palatnik, P.C., for Scott Berman, owner.

SUBJECT – Application April 8, 2013 – Proposed two-story two family residential development which is within the unbuilt portion of the mapped street on the corner of Haven Avenue and Hull Street, contrary to General City Law 35. R3-1 zoning district.

PREMISES AFFECTED – 107 Haven Avenue, Corner of Hull Avenue and Haven Avenue, Block 3671, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application No. 520124552, reads in pertinent part:

Proposed construction on a 12-10 (a) Zoning Lot located within the bed of a mapped street is contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, with continued hearings on November 19, 2013 and March 4, 2014, and then to decision on March 25, 2014; and

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

WHEREAS, this is an application to allow the construction of a two-story, two-family home within mapped but unbuilt portions of Hull Avenue; and

WHEREAS, the subject site is a corner lot located at the southwest corner of the intersection of Haven Avenue and Hull Avenue, within an R3-1 zoning district; and

WHEREAS, Hull Avenue is mapped to terminate at Haven Avenue but currently terminates in a dead-end near the western boundary of the site; and

WHEREAS, the applicant states that the site has a lot width of approximately 45 feet, a lot depth of approximately 80 feet, and approximately 3,502 sq. ft. of lot area; and

WHEREAS, the applicant notes that the proposed building will have approximately 1,961 sq. ft. of floor area (0.56 FAR) and that the site will include three accessory off-street parking spaces; and

WHEREAS, by letter dated May 9, 2013, the Fire Department states that it has reviewed the proposal and offers no objections; and

WHEREAS, by letter dated May 13, 2013, the Department of Environmental Protection (“DEP”) states that:

(1) there is an existing eight-inch diameter city water main in the bed of Hull Avenue between Haven Avenue and Boundary Avenue; (2) there is an existing ten-inch diameter sanitary sewer and an existing eight-inch diameter city water main in the bed of Haven Avenue between Hull Avenue and Adams Avenue; (3) the preliminary proposed Drainage Plan Sheet 8 of 12, dated June 5, 2012, calls for a future ten-inch diameter sanitary sewer and a 12-inch storm sewer to be installed in hull Avenue between Haven Avenue and Boundary Avenue, and for a future 10-inch sanitary sewer and a 12-inch diameter storm sewer in Haven Avenue between Hill Avenue and Adams Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped Hull Avenue between Haven Avenue and Boundary Avenue, the width of the widening portions of the street and available portion of the street; (2) the width of mapped Haven Avenue between Hull Avenue and Adams Avenue and the width of widening portions of the street and available portions of the street; (3) the distances between the lot line of Lot 15 and end cap of the eight-inch diameter city water main in Hill Avenue; (4) the distance from the lot line of Lot 15 to the hydrant in Hull Avenue; and (5) a 32-foot wide sewer corridor in the bed of Haven Avenue between Hull Avenue and Adams Avenue for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, the 12-inch diameter storm sewer, the existing ten-inch diameter sanitary sewer and the 8-inch diameter water main; and

WHEREAS, in response to DEP’s request, by letter dated July 29, 2013, the applicant submitted a revised survey; and

WHEREAS, by letter dated August 12, 2013, DEP

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states that, based on its review of the applicant's response, it has no objections to the proposal; and

WHEREAS, by email correspondence dated September 6, 2013, the Department of Transportation ("DOT") requested that the applicant perform a title search for the following streets: (1) Haven Avenue from Jefferson Avenue to Adams Avenue; and (2) Hull Avenue from Haven Avenue to Boundary Avenue ; and

WHEREAS, DOT also states that according to the Staten Island Topographical Bureau's records, the city does not have title to or a Corporation Counsel Opinion of Dedication ("CCO") for Hull Avenue at this location and that the city has a CCO for Haven Avenue at this location for 29 to 50 feet, as-in-use on April 4, 1991; and

WHEREAS, accordingly, DOT directed the applicant to perform a title search to determine the ownership of the portions of Hull Avenue and Haven Avenue in question; and

WHEREAS, following a series of correspondences between DOT and the applicant, DOT states that: (1) because the Staten Island Topographical Bureau identified Haven Avenue at this location as a CCO as-in-use, DOT cannot authorize the proposed clearing of the vegetation and the guardrail that juts into the mapped width of Haven Avenue; and (2) although the applicant has title to Haven Avenue up to the center line of Hull Avenue, the city does not own the other half and, as such, DOT cannot authorize the construction of continuous street infrastructure along Haven Avenue, which is required; and

WHEREAS, by letter dated March 18, 2014, the applicant states that based on its title company's representation, ownership of Haven Avenue to the center line of Hull Avenue remains with the city; and

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

WHEREAS, the Board also notes that Haven Avenue has been a mapped street since December 5, 1929 and that DOT has not represented that construction within the unbuilt portions of Haven Avenue would either conflict or interfere with the its Capital Improvement Program; and

WHEREAS, accordingly, the Board finds that DOT's remaining concern regarding the identity of the owner of Haven Avenue beyond the guardrail is not a basis to deny the application; however, the applicant must determine the identity of the owner of that portion of Haven Avenue and obtain permission for the proposed improvements prior to the issuance of a building permit; and

WHEREAS, at hearing, the Board requested clarification regarding: (1) the proposed street setback's compliance with the Zoning Resolution; and (2) whether the proposed building could be aligned with the adjoining homes; and

WHEREAS, in response, the applicant states that setback is permitted from the record line because the site is a ZR § 12-10(a) zoning lot; as to aligning with the adjacent homes, the applicant notes that the adjacent site are larger than the subject site and, as such, can provide a setback without

losing important marketable floor area; the subject site, in contrast, would lose bedrooms if it were to be aligned with the adjacent homes; and

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

Therefore it is Resolved, that the Board modifies the decision of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application No. 520124552, by the power vested in it by Section 35 of the General City Law, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received March 5, 2014" – one (1) sheet; and *on further condition*:

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

THAT owner's authorization for the proposed improvements of Haven Avenue will be obtained prior to the issuance of the DOB permit(s);

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

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

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

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

Adopted by the Board of Standards and Appeals on March 25, 2014.

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

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80-11-A, 84-11-A & 85-11-A & 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings’ interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for adjourned hearing.

164-13-A

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse Department of Buildings’ determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings’ determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 1, 2014, at 10 A.M., for adjourned hearing.

307-13-A & 308-13-A

APPLICANT – Joseph M. Morace, R.A., for Jake Rock, LLC, owner.

SUBJECT – Application November 21, 2013 – Proposed construction of two detached, two-family residences not fronting on a mapped street, contrary to Section 36 of the General City Law. R3A zoning district.

PREMISES AFFECTED – 96 & 100 Bell Street, Block 2989, Lot 24 & 26, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

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ZONING CALENDAR

64-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Norma Chakkalo and Abdo Chakkalo, owners.

SUBJECT – Application February 11, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue, Block 7184, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated January 23, 2013, acting on DOB Application No. 320705368, reads in pertinent part:

The proposed enlargement of the existing one-family residence in an R4 (Ocean Parkway) zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio, contrary to Section 23-141 of the Zoning Resolution
2. Creates non-compliance with respect to lot coverage/open space, contrary to Section 23-141 of the Zoning Resolution
3. Creates non-compliance with respect to side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution
4. Creates non-compliance with respect to rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R4 zoning district, within the Special Ocean Parkway District, the proposed enlargement of a semi-detached, single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 4, 2014, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is located on the north side of Avenue W, between East 7th Street and Coney Island Avenue, within an R4 zoning district, within the Special Ocean Parkway District; and

WHEREAS, the site has a lot area of 2,675 sq. ft. and is occupied by a detached, single-family home with a floor area of 2,094 sq. ft. (0.78 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 2,094 sq. ft. (0.78 FAR) to 3,490 sq. ft. (1.3 FAR); the maximum permitted floor area is 2,006 sq. ft. (0.75 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 71 percent to 42 percent; the minimum required open space is 55 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 29 percent to 58 percent; the maximum permitted lot coverage is 45 percent; and

WHEREAS, the applicant seeks to maintain and extend its existing non-complying side yard width of 3’-9”; one side yard with a minimum width of 8’-0” is required; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 41’-2¼” to 20’-0”; a minimum rear yard depth of 30’-0” is required; and

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

WHEREAS, at hearing, the Board directed the applicant to clarify that: (1) the proposed party wall was permitted to exceed the maximum building height and sky-exposure plane; and (2) the slope of the proposed driveway was less than 11 percent; and

WHEREAS, in response, the applicant confirmed that the proposed party wall was a permitted obstruction and that the proposed slope of the driveway was ten percent; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §

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73-622, to permit, within an R4 zoning district, within the Special Ocean Parkway District, the proposed enlargement of a semi-detached, single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received February 11, 2013”- (2) sheets, “December 23, 2013”-(9) sheets and “March 11, 2014”-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,490 sq. ft. (1.3 FAR), a minimum open space of 42 percent, a maximum lot coverage of 58 percent, a side yard with minimum width of 3’-9”, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

76-13-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Pometko, owner.

SUBJECT – Application February 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141), side yards (§23-461), and less than the minimum required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 176 Oxford Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated November 15, 2013, acting on DOB Application No. 301408046, reads in pertinent part:

The proposed horizontal and vertical enlargement of the existing one-family residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to lot coverage, contrary to Section 23-141(b) of the Zoning Resolution;
2. Creates a new non-compliance with respect to floor area ratio, contrary to Section 23-141(b) of the Zoning Resolution
3. Creates a new non-compliance with respect to rear yard, contrary to 23-47 of the Zoning Resolution
4. Increases the degree of non-compliance with respect to side yards, contrary 23-461(a); and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is located on the west side of Oxford Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has a total lot area of 2,500 sq. ft. and is occupied by a single-family home with a floor area of 1,267 sq. ft. (0.51 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from 1,267 sq. ft. (0.51 FAR) to 2,280 sq. ft. (0.91 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.6 FAR); and

WHEREAS, the applicant seeks to increase the lot coverage from 41 percent to 47 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant seeks to maintain and extend the building’s existing non-complying yard widths of 2’-9” and 0’-1”; (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each); and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 24’-8” to 20’-0”; a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the

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neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant represents and the Board agrees that the proposed 0.91 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, further, the Board acknowledges that, in recent years, it has granted special permits authorizing enlargements resulting in similar FARs for buildings in the surrounding area; and

WHEREAS, at hearing, the Board directed the applicant to submit additional evidence regarding the legality of the north side yard; and

WHEREAS, in response, the applicant submitted: (1) the DOB-approved plans from 1974; (2) a 1974 letter from the DOB Borough Superintendent stating that the work has been completed; and (3) a letter from a professional engineer stating that the yard is legal; and

WHEREAS, the Board finds that DOB's approval of the plans and sign-off of the completed work are, when considered together, sufficient evidence of the legality of the north side yard; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 11, 2014" – (11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,280 sq. ft. (0.91 FAR), a maximum lot coverage of 47 percent, side yards with minimum widths of 2'-9" and 0'-1", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

92-13-BZ & 93-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for FHR Development LLC, owner.

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings, contrary to required rear yard regulation (§23-47). R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTIONS –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 14, 2014, and acting on Department of Buildings Application No. 520122162 reads, in pertinent part:

ZR 23-45 – Front yard is deficient (less than 15 feet); and

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 14, 2014, and acting on Department of Buildings Application No. 520122171 reads, in pertinent part:

ZR 23-45 & 23-47 – Front yard (less than 15 feet) and rear yard (less than 30 feet) are deficient; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district within a Lower Density Growth Management Area, the construction of two semi-detached, two-story, single-family homes that do not comply with the underlying zoning district regulations for front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with continued hearings on December 17, 2013, January 28, 2014, and March 4, 2014, and then to decision on March 25, 2014; and

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

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

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WHEREAS, certain members of the surrounding community submitted testimony in opposition to the application, citing concerns about the proposal's impact on neighborhood property values, natural light, and ventilation; and

WHEREAS, the subject site is located on the west side of Lewiston Street, approximately 531 feet north of Travis Avenue, in an R3-1 zoning district within a Lower Density Growth Management Area; and

WHEREAS, the site, which is vacant, has approximately 104 feet of frontage along Lewiston Street and 6,654 sq. ft. of lot area; and

WHEREAS, the applicant proposes to subdivide the site into two zoning lots (corresponding to Tentative Tax Lots 238 and 239), and on each construct a two-story, single-family semi-detached home; and

WHEREAS, Tentative Lot 238 will have approximately 66 feet of frontage along Lewiston Street and 3,086 sq. ft. of lot area; the home on Tentative Lot 238 will have 1,538 sq. ft. of floor area (0.49 FAR) (a maximum of 1,710.5 sq. ft. of floor area (0.6 FAR) is permitted); a front yard with a non-complying depth of 9'-3" (a front yard with a minimum depth of 15'-0" is required); a side yard with a minimum width of 8'-0" along the southern lot line, and no side yard along the northern lot line, where the building will attach to the new building to be constructed on Tentative Lot 239 (one side yard with a minimum width of 8'-0" is required); a rear yard with a depth of 30'-0" (a rear yard with a minimum depth of 30'-0" is required); a perimeter wall height of 21'-6" (the maximum permitted perimeter wall height is 26'-0"); and a total height of 29'-6" (the maximum permitted total height is 35'-0"); and

WHEREAS, the Board notes that, initially, the proposed home for Tentative Lot 238 provided a complying front yard, but included a rear yard depth of 26'-0" and a floor area of approximately 1,616 sq. ft. (0.47 FAR); however, through the hearing process, the lot area and floor area were reduced and the rear yard waiver was replaced with a front yard waiver request; and

WHEREAS, Tentative Lot 239 will have approximately 48 feet of frontage along Lewiston Street and 3,568 sq. ft. of lot area; the home on Tentative Lot 239 will have 1,538 sq. ft. of floor area (0.43 FAR) (a maximum of 1,617 sq. ft. of floor area (0.6 FAR) is permitted); a front yard with a non-complying depth of 9'-3" (a front yard with a minimum depth of 15'-0" is required); a side yard with a width of 23'-0" along the northern lot line, and no side yard along the southern lot line, where the building will attach to the new building to be constructed at Tentative Lot 238 (one side yard with a minimum width of 8'-0" is required); a rear yard with a non-complying depth of 20'-0" (a rear yard with a minimum depth of 30'-0" is required); a perimeter wall height of 21'-6" (the maximum permitted perimeter wall height is 26'-0"); and a total height of 29'-6" (the maximum permitted total height is 35'-0"); and

WHEREAS, the Board notes that, initially, the proposed home for Tentative Lot 239 provided a complying front yard, but included a rear yard depth of 10'-7" and a floor area of

approximately 1,616 sq. ft. (0.50 FAR); however, through the hearing process, the floor area was reduced, the proposed front yard waiver was added, and the rear yard depth was increased from 10'-7" to 20'-0"; and

WHEREAS, accordingly, in order to construct both homes at the site, the applicant seeks a variance to allow the proposed front yards, contrary to ZR § 23-45, and the proposed rear yard on Tentative Lot 239, contrary to ZR § 23-47; and

WHEREAS, the applicant states that the site's large size, shallow depth, and trapezoidal shape are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations, in accordance with ZR § 72-21(a); and

WHEREAS, the applicant asserts that the site's 6,654 sq. ft. of lot area makes it significantly larger than the majority of sites in the surrounding area; specifically, the applicant states that of the surrounding 160 sites, only ten sites (approximately six percent) had a lot area greater than 6,000 sq. ft. and the average lot area was 3,562 sq. ft.; and

WHEREAS, as such, the applicant asserts that the proposed subdivision of the site into two zoning lots with lot areas of 3,086 sq. ft. and 3,568 sq. ft. is consistent with the prevailing lot size within the surrounding area; and

WHEREAS, the applicant states that the site has a lot depth that varies from approximately 92 feet along the southern boundary to approximately 41 feet along the northern boundary; and

WHEREAS, the applicant states that the varying lot depth is a direct result of the angle of Lewiston Street, which cuts diagonally and renders the site trapezoidal in shape; and

WHEREAS, the applicant represents that the depth and shape of the site are unique in the surrounding area, and submitted an area study to support this representation; and

WHEREAS, the applicant states that, according to the study, there are no other sites that have similar characteristics (shallow depth and trapezoidal shape) within 400 feet of the site; and

WHEREAS, the applicant also notes that the site's size and shape are historic and not the result of a subdivision from any lots within Block 2370; rather, the applicant submitted evidence demonstrating that the site has always been owned separately from the adjacent lots on Block 2370 and was created in its current form via subdivision of Block 2371, Lot 152 (which is separated from the site and Block 2370 by Lewiston Street); and

WHEREAS, the applicant asserts that, together, the lot size, shallow and varying lot depth, and trapezoidal lot shape create a practical difficulty in constructing marketable homes that provide both front and rear yards in accordance with the Zoning Resolution; and

WHEREAS, the applicant also notes that the site is ineligible for the shallow lot rear yard adjustments set forth in ZR § 23-52, because the site is not less than 70 feet in depth at

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all points¹; as such, the applicant states that although the Zoning Resolution contemplates as-of-right relief for a shallow lot, the site is unable to take advantage of it; and

WHEREAS, the applicant examined the feasibility of the following as-of-right residential options for the site, both of which involve the development of the site without subdivision: (1) a single, detached two-family home with approximately 2,192 sq. ft. of floor area (0.33 FAR); and (2) a single, detached single-family home with approximately 1,818 sq. ft. of floor area (0.27 FAR); and

WHEREAS, the applicant asserts that both scenarios resulted in significant underutilization of the permitted FAR (0.5) for the site; the applicant also notes that, based on its area study, only ten of the surrounding 160 sites have an FAR of less than 0.5 and the average FAR is 0.63; in contrast, the proposal—which has a combined floor area of 3,076 sq. ft. (0.46 FAR)—is relatively modest; and

WHEREAS, further, the applicant notes that a detached two-family home would be out of character with the surrounding area, where 68 percent of the homes are single-family homes, and discordant with the character of Lewiston Street, where 70 percent of the homes are single-family homes; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return or a result in a habitable home; and

WHEREAS, as noted above, in addition to the proposal, the applicant explored the financial feasibility of developing the site with a single, detached two-family home and with a single, detached single-family home; and

WHEREAS, based on the analysis, the applicant represents that only the proposal will result in habitable homes that: (1) are consistent with the surrounding community; and (2) will yield a reasonable return; and

WHEREAS, the Board agrees with the applicant that because of the site's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in both a habitable home and a reasonable return; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by low rise detached and semi-detached one- and two-family dwellings; and

WHEREAS, the applicant notes that the use is permitted as-of-right in the subject R3-1 district; and

WHEREAS, as to bulk, the applicant states that the proposal's floor area, wall and building height, and rear and

side yards are well within the district parameters; and

WHEREAS, the applicant states that the proposal's impact on adjacent uses is minimal; and

WHEREAS, the applicant notes that north of the site is a generous side yard with a width of 23'-0" where a width of only 8'-0" is required, and beyond that, a cul-de-sac, south of the site is a complying side yard (driveway) and a series of attached dwellings, east of the site (across Lewiston Street) are a series of single-family homes, and west of the site, are a series of detached, single-family homes fronting on Beard Street; and

WHEREAS, the Board acknowledges that certain immediate neighbors expressed opposition to the proposal, citing concerns about natural light and ventilation to their home due to the reduced yards; and

WHEREAS, the Board notes, however, that these homes are located on rectangular, deep lots with complying rear yards and that the proposal was modified to eliminate the rear yard waiver for Tentative Lot 238 and increase the depth of the rear yard at Tentative Lot 239 from 10'-7" to 20'-0", resulting in a distance between the proposed homes and the neighboring homes that varies from approximately 50 feet to approximately 60 feet; and

WHEREAS, as such, the Board finds that the proposal does not negatively impact on the neighboring properties to the west; and

WHEREAS, likewise, the Board finds that the impact of the front yard waiver upon adjacent uses along Lewiston Street is minimal; and

WHEREAS, the applicant states that because Lewiston Street runs diagonally, nearly all homes along it have a varying front yard depth; the effect is that the streetscape has an irregular quality; and

WHEREAS, accordingly, the proposed front yard contributes to the diversity of the Lewiston Street streetscape; and

WHEREAS, further, the applicant states that the front yard waiver is mitigated by the amount of open space being provided on the site and the proposal's overall consistency with the neighboring use, bulk, and aesthetics; and

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

WHEREAS, the Board finds that, per ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is a result of the site's unique physical conditions; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

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

¹ This interpretation was affirmed by the Board in BSA Cal. No. 47-12-A (22 Lewiston Street, Staten Island).

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R3-1 zoning district within a Lower Density Growth Management Area, the construction of two semi-detached, two-story, single-family homes that do not comply with the underlying zoning district regulations for front and rear yards, contrary to ZR §§ 23-45 and 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 18, 2014"– (7) sheets; and *on further condition*:

THAT the parameters of the home on Tentative Lot 238 will be as follows: two stories, a maximum floor area of 1,537 sq. ft. (0.49 FAR); a minimum front yard depth of 9'-3"; a minimum rear yard depth of 30'-0"; one side yard with a minimum width of 8'-0" along the southern lot line; a maximum perimeter wall height of 21'-6"; and a total building height of 29'-6", as illustrated on the BSA-approved plans;

THAT the parameters of the home on Tentative Lot 239 will be as follows: two stories, a maximum floor area of 1,537 sq. ft. (0.43 FAR); a minimum front yard depth of 9'-3"; a minimum rear yard depth of 20'-0"; one side yard with a minimum width of 23'-0" along the northern lot line; a maximum perimeter wall height of 21'-6"; and a total building height of 29'-6", as illustrated on the BSA-approved plans;

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

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

THAT substantial construction will be completed pursuant to ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

157-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.

SUBJECT – Application May 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1368 & 1374 East 23rd Street, west side of East 23rd Street, 180' north of Avenue N, Block 7658, Lot 78 & 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings ("DOB"), dated April 18, 2013, acting on DOB Application No. 320729208, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to ZR 23-141 in that the proposed enlargement increases the degree of non-compliance with respect to minimum required side yards;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 4, 2014, and then to decision on March 25, 2014; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site comprises Lots 78 and 80, which have a total lot area of 8,000 sq. ft.; Lot 78 is occupied by a

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single-family home with 2,044 sq. ft. of floor area (0.51 FAR); Lot 80 is also occupied by a single-family home; however, that home will be demolished to allow for the enlargement of the home on Lot 78; and

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

WHEREAS, the applicant now seeks an increase in the floor area from 2,044 sq. ft. (0.51 FAR, as calculated using only the lot area of Lot 78) to 8,179 sq. ft. (1.02 FAR, as calculated using the combined lot area of Lots 78 and 80); the maximum permitted floor area is 4,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks an open space ratio for the enlarged home of 52 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain and extend the building's existing non-complying side yard width of 3'-8" and reduce its complying side yard width from 13'-10" to 13'-3"; (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, the applicant also seeks to decrease its complying rear yard depth from 30'-8½" to 20'-0"; a rear yard with a minimum depth of 30'-0" is required; and

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

WHEREAS, in particular, the applicant represents that the proposed FAR is consistent with the bulk in the surrounding area and states that, based on its analysis of the lots within 400 feet of the site and with a minimum lot area of 8,000 sq. ft., there are 11 homes with an FAR in excess of 1.02; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a streetscape of the site and the nearby homes; (2) provide revised plans showing the extent of the foundation removal; and (3) reduce the proposed building height to be more consistent with the surrounding context; and

WHEREAS, in response, the applicant submitted: (1) a streetscape showing that the building is consistent with the surrounding buildings; and (2) revised plans showing the extent of the foundation removal and reflecting a reduction in building height from 41'-9" to 36'-0"; and

WHEREAS, based on its review of the streetscape and the revised drawings, the Board finds that the proposed bulk is compatible with the character of the neighborhood; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 19, 2014" – (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 8,179 sq. ft. (1.02 FAR), a building height of 36'-0"; a minimum open space ratio of 52 percent, side yards with minimum widths of 13'-3" and 3'-8", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 25, 2014.

282-13-BZ
CEQR #14-BSA-052K

APPLICANT – Flora Edwards, Esq., for Red Hook Property Group, LLC, owner; High Mark Independent, LLC, lessee. SUBJECT – Application October 4, 2013 – Special Permit (§73-19) to permit construction of a new 89,556 sq.ft. school (*The Basis Independent Schools*). M1-1 zoning district.

PREMISES AFFECTED – 556 Columbia Street aka 300 Bay Street, west side of Columbia Street between Bay Street and Sigourney Street, Block 601, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 19, 2013, acting on Department of Buildings Application No. 320843110, reads in pertinent part:

This application for a proposed school (Use Group 3) will require a special permit by the BSA. It is in the M1-1 district and a school is permitted by special permit only: (42-31); and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-1 zoning district, the construction of a five-story Use Group 3 school, contrary to ZR § 42-31; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in the *City Record*, and then to decision on March 25, 2014; and

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

WHEREAS, Community Board 6, Brooklyn, recommends disapproval of this application, primarily based on concerns about the compatibility of the use with the surrounding area and integration into the community; and

WHEREAS, City Council Member Carlos Menchaca and State Senator Velmanette Montgomery provided testimony in opposition to the proposal, citing concerns that the school cannot co-exist with nearby industrial use, the school does not benefit the community, and it will introduce traffic conflicts; and

WHEREAS, South Red Hook Industrial Alliance for No Basis, Red Hook East Resident Association, Red Hook West Resident Association, Red Hook Rise, Southwest Brooklyn Industrial Development Corporation and several members of the community provided testimony in opposition to the proposal, citing concerns that the school would not be harmonious with the surrounding area, that its location threatens the Industrial Business Zone (“IBZ”) and job retention and would be both disruptive to existing traffic and create unsafe traffic conditions for students; and

WHEREAS, together, the Opposition raised additional concerns about: (1) whether notification had been performed as required; (2) whether there is a higher standard for review for private schools; (3) whether the School established that there is a practical possibility of obtaining a site as of right within the neighborhood to be served; (4) whether the traffic issues of the surrounding non-residential district had been addressed; (5) whether the project will have a negative impact on the IBZ; and (6) whether the school will have a negative impact on public welfare; and

WHEREAS, certain members of the surrounding community provided testimony in support of the application and submitted a petition with 200 signatures; and

WHEREAS, the application is brought on behalf of the Basis Independent Schools (the “School”); and

WHEREAS, the subject site is on the east side of the block, bounded by Bay Street, Otsego Street, Sigourney

Street, and Columbia Street; the site has 241 feet of frontage on Bay Street, 200 feet of frontage on Columbia Street, and 241 feet of frontage on Sigourney Street, with a lot area of 48,623 sq. ft.; and

WHEREAS, the site is a paved lot which is currently vacant, but was formerly used as a private lot for school buses and construction vehicles; and

WHEREAS, the School proposes to construct a Use Group 3 school with five stories, 89,556 sq. ft. of floor area (1.8 FAR) and a building height of 76’-6”;

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that the proposal will meet the School’s programmatic needs; and

WHEREAS, the applicant states that it will attract families from Brooklyn neighborhoods of Carroll Gardens, Cobble Hill, Boerum Hill, DUMBO, Brooklyn Heights, Park Slope, Vinegar Hill, and Williamsburg as well as some from downtown Manhattan, such as Battery Park City and Tribeca, which is less than a 20-minute drive via the Brooklyn-Battery Tunnel; and

WHEREAS, the School’s projected enrollment of 1,000 students and needs for specific spaces such as a 389-seat theater, full-size gymnasium, and science labs necessitate a site with (1) a minimum lot size of at least 40,000 sq. ft., preferably 200 feet by 200 feet; (2) a potential to accommodate at least 80,000 sq. ft. of floor area; (3) the ability to safely drop-off/pick-up students; and (4) a purchase process not to exceed \$10 million or a lease not to exceed \$10/square foot unimproved; and

WHEREAS, the applicant states that it conducted a search of more than 50 properties within its catchment area which yielded no feasible sites as alternatives to the project site; and

WHEREAS, the applicant states that neighborhoods where a school is permitted as of right were substantially improved with residential and commercial development, which made it not possible to locate a lot or facility large enough to accommodate the proposed school program; and

WHEREAS, the applicant asserts that the majority of potential sites were located in manufacturing zoning districts; and

WHEREAS, the applicant considered the feasibility of (1) 82 and 74 Sullivan Street, but the combined lot size of 160 feet by 100 feet was insufficient; (2) 840-850 Metropolitan Avenue, (3) 657-665A Fifth Avenue, and (4) 834 Sterling Place, which all had an insufficient size; and

WHEREAS, the applicant states that the school expanded its search into residential zoning districts beyond its catchment area, but rejected four more sites due to lot

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and building size inadequacy; those were (1) 5601 Second Avenue in Sunset Park; and (2) 203 Sutter Avenue, (3) 191 Dumont Avenue, and (4) 994 Saratoga Avenue in Brownsville; and

WHEREAS, the applicant submitted a letter from a real estate brokerage stating that it was impractical to assemble the required amount of floor area within a residential zoning district because such districts are substantially developed; and

WHEREAS, the applicant states that the building program includes: (1) 42 accessory parking spaces for teachers and staff, a lobby, a security office, and associated circulation space at the ground level; (2) a main lobby, theater, gymnasium, outdoor play areas, a cafeteria, and several classroom and administrative offices at the first school level; (3) eight classrooms and administrative space at the second school level; (4) ten classrooms, a cafeteria, and a lab at the third school level; (5) ten classrooms and an art room at the fourth school level; and (6) three physics labs, three biology labs, three chemistry labs, a reading room, and teachers' offices at the fifth school level; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located directly across the street from an R5 zoning district, less than 100 feet to the east across Columbia Street and to the south across Sigourney Street where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant submitted a land use map which reflects that the adjacent manufacturing and commercial uses include: warehousing/shipping, a landscape design and urban ecology firm, and fine art and transport company to the west; a construction company and a marine engine and equipment repair business to the north; and another construction company to the northwest; and

WHEREAS, the applicant notes that it shares a lot line with only one building to the west, which is occupied primarily by light manufacturing and commercial uses within a two- to four-story building, and the site is separated from the other uses by Bay Street to the north and Columbia Street to the east; and

WHEREAS, the applicant notes that two of its largest

neighbors are the 58.5-acre Red Hook Recreation Area directly to the east across Columbia Street and the full-block park occupied by the Red Hook Community Farm directly to the south across Sigourney Street; diagonally to the south is the Todd Memorial Square, a landscaped traffic island; and

WHEREAS, the applicant states that the block immediately north of the site includes a school bus parking lot and a construction company use; and

WHEREAS, the applicant has identified a series of building conditions that will minimize sound transmission levels from the street to the building interior; those include: reinforced exterior wall assembly well in excess of the required sound attenuation, annealed, laminated, and insulated glass for the windows which provide an Outdoor-Indoor Sound Transmission Coefficient (OITC) in excess of that required; and

WHEREAS, the applicant proposes that the separation from noise, traffic, and other adverse effects would be achieved through their proposed window and wall assemblies, which include the exterior wall design with an Sound Transmission Coefficient (STC) of 65 dB(A) and exterior glazing to perform at an OITC rating of 32 dB(A) on all east-facing windows and OITC of 28 dB(A) on all other facades; and

WHEREAS, the applicant states that on the north façade, a sound attenuation level of 25 dB(A) is required to achieve the desired community facility interior noise level of 45 dB(A) or lower; at the east façade, a sound attenuation level of 31 dB(A) is required to achieve the desired community facility interior noise level of 45dB(A); at the south façade, a sound attenuation level of 25 dB(A) is required to achieve the desired community facility noise level of 45 dB(A) or lower; and

WHEREAS, the applicant states that it will have an HVAC system to provide an alternate means of ventilation in all habitable rooms that will allow for a closed window condition and adequate window-wall attenuation to ensure acceptable interior noise levels; and

WHEREAS, the applicant concludes that it will comply with all applicable environmental regulations and that emissions from industrial uses within 400 feet of the site will not cause significant adverse impact on the school; and

WHEREAS, further, the applicant notes that the building will be set back from all street frontages by a minimum of ten feet and buffered by landscaped areas; and

WHEREAS, as far as traffic, the applicant states that based on the traffic study, none of the intersections in close proximity to the proposed site were found to be high accident points; and

WHEREAS, the applicant has identified what it predicts to be the most common routes to the school and has addressed those with the Department of Transportation ("DOT"); and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the

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surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the following measures are proposed to protect children traveling to and from the School: (1) installation of seven high visibility crosswalks at key intersections; (2) installation of school zone signage at the approaches to the site to warn motorists that they are approaching a school; and (3) positioning crossing guards at local intersections where high pedestrian activity is anticipated; and

WHEREAS, the Board notes that the applicant has submitted a Proposed Pedestrian Safety Plan, which reflects all the points for crosswalks, crossing cards, and signage that will be installed and maintained in the surrounding area; and

WHEREAS, the Board referred the application to DOT's School Safety Engineering Office; and

WHEREAS, by letter dated October 21, 2013, DOT states that it has no objection to the proposal and has identified Bay Street and Columbia Street as local truck routes and recommended that this should be taken into consideration when designing the pedestrian safety plan; and

WHEREAS, upon approval of the application, DOT will prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, in response to certain concerns raised by the Opposition about the applicability of the special permit, the applicant asserts that a special permit, unlike a variance, authorizes the use of property in a manner expressly permitted by the zoning ordinance under stated conditions and that "inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the generalized zoning plan and will not adversely affect the neighborhood" North Shore Steak House Inc. v. Board of Appeals of Town of Thomastown, 30 N.Y.2d 238 (1972); and

WHEREAS, accordingly, the applicant states that the burden on one seeking a special use permit is lighter than one seeking variance since the issuance of a special permit is a duty enjoined upon zoning officials whenever there is compliance with the statutory conditions see Peter Pan Games of Bayside, Ltd. v. Board of Estimate of City of New York, 67 A.D.2d 925 (2d Dept 1967); and

WHEREAS, additionally, the applicant states that because of their inherently beneficial nature, educational

institutions enjoy special treatment and are allowed to expand into neighborhoods where nonconforming uses would otherwise not be allowed, citing to Albany Preparatory Charter School v. City of Albany, 31 A.D.3d 870 (3d Dept. 2006); and

WHEREAS, by supplemental submission, the applicant responded to the Opposition's following concerns: (1) whether notification had been performed as required; (2) whether there is a higher standard for review for private schools; (3) whether the School established that there is a practical possibility of obtaining a site as of right within the neighborhood to be served; (4) whether the traffic issues of the surrounding non-residential district had been addressed; (5) whether the project will have a negative impact on the IBZ; and (6) whether the school will have a negative impact on public welfare; and

WHEREAS, as to proper notice, the applicant described its compliance with the Board's Rule §§ 1-10.6 1-10.7 and Community Board 6's Responsible Development Policy; and

WHEREAS, as to the appropriate standard of review for private schools, the applicant states that there is not any statutory or regulatory basis for finding that an application for a special permit to construct an independent or private school be viewed with any more stringent scrutiny under ZR § 73-19 than an application submitted by a religious institution or charter school; and

WHEREAS, the applicant asserts that New York State courts recognize deferential treatment to educational institutions due to their inherently beneficial nature (citing Pine Knolls Alliance Church v. Zoning Bd. of Appeals of Town of Moreau, 5 N.Y.3d 407 (2005); Trustees of Union College of Town of Schenectady in State of N.Y. v. Members of Schenectady City Council, 91 N.Y.2d 161; and

WHEREAS, the applicant asserts that private institutions are entitled to deferential treatment so long as they carry out the educational mission of the State because they have the same beneficial effect upon the general welfare of the community as public schools (citing to Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the applicant states that the School's mission to raise the level of American education to the highest international standards and that the curriculum meets or exceeds New York State requirements; and

WHEREAS, the applicant asserts that there is no doubt that the School carries out the educational mission of the State and is entitled to the same deferential treatment of public institutions; and

WHEREAS, as to alternate sites, the applicant asserts that it has fully satisfied the requirement to demonstrate that there is no practical possibility of obtaining a site as of right with the neighborhood to be served; and

WHEREAS, the applicant represents that it undertook a deliberate search process, during a one-year period, it visited more than 50 sites and identified Brooklyn as under capacity for private schools and thus the focus of its search; and

WHEREAS, the applicant states that there is not any

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merit to the Opposition's contentions that ZR § 73-19 requires that an applicant prove a need for expansion or establish a pre-existing presence in the catchment area; and

WHEREAS, as to the Opposition's contentions that the site is situated in a heavily-trafficked truck route and student safety cannot be assured, the applicant's studies show that there are not any high accident locations nearby and its noted safety measures will be implemented in the area to mitigate any concerns; and

WHEREAS, as to the location within the IBZ, the applicant addresses the Opposition's characterization that the site is located in an M3 zoning district in the heart of the IBZ and that permitting construction of a school would negatively impact the economic viability of the zone by depriving the area of needed industrial use space, employment opportunities, and establish a precedent for the development of alternative uses for sites in the IBZ; and

WHEREAS, the applicant notes that that the site is located within an M1 zoning district, rather than M3, and is located 200 feet from the border of the IBZ between a public park and an urban farm, rather than at its heart; and

WHEREAS, the applicant represents that the site's lot area constitutes approximately two percent of the total available area in the IBZ and that currently, there is 2,039,422 sq. ft. of available space for rent in the IBZ and that for the past ten years, the site has not generated any employment or other income except for the payment of the lease to park buses; and

WHEREAS, the applicant asserts that, on the contrary, the School will create approximately 100 new permanent jobs and contracts; and

WHEREAS, as to any impact on public welfare, the applicant asserts that the presumption is that educational uses are always in furtherance of the public health, safety, and morals (citing Cornell, 68 N.Y.2d at 589); and

WHEREAS, the applicant asserts that the burden shifts to the Opposition to rebut the presumption with evidence of a significant impact on traffic congestion, property values, and municipal services (citing Albany Preparatory Charter School v. City of Albany, 31 A.D.3d at 870; and

WHEREAS, the applicant asserts that its traffic safety measures and building construction conditions address safety and health issues and the School is prepared to adopt whatever additional measures may be deemed necessary; and

WHEREAS, the applicant states that the School is committed to being a good neighbor and will establish a working advisory committee to assist in further integrating the school with the community; and

WHEREAS, the applicant states that the school has committed to offer two scholarships to community members per year and will make School space available to the community for meetings and also for emergency relief; and

WHEREAS, the Board finds the applicant's submissions to be responsive to the Opposition's concerns and is satisfied that the proposal meets the findings of the special permit and is not subject to additional

considerations; and

WHEREAS, the Board recognizes the purpose of the IBZ but based on the site's size, location at the edge of the zone across from two large parks, and history of use, it does not find that the use of the site, as contemplated by the special permit, undermines the IBZ's goals; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; as noted above, the School's impact on traffic will be minimal and will be mitigated by: (1) installation of high visibility crosswalks; (2) installation of school zone signage at the approaches to the site to warn motorists that they are approaching a school; and (3) positioning crossing guards at local intersections where high pedestrian activity is anticipated; and

WHEREAS, further, the Board notes that DOT has reviewed and approved of the traffic safety plan; and

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

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No.14BSA052K, dated March 21, 2014; and

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

WHEREAS, DOT's Division of Traffic and Planning reviewed the EAS and March 2014 Traffic Study and concluded that the proposed project would not create any significant adverse traffic or pedestrian impacts; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential air quality and noise impacts; and

WHEREAS, DEP reviewed the consultant's December 18, 2013 air quality response submissions and determined that the proposed school would not create any significant adverse air quality impacts and that there would not be any adverse air quality impacts on the proposed school from existing industrial emission sources within 400 feet of the subject site; and

WHEREAS, based on the projected noise levels, DEP

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concurring with the consultant that their proposed design measures would provide sufficient attenuation to satisfy CEQR requirements; and

WHEREAS, OER has approved the Remedial Action Plan and the Construction Health and Safety Plan; and

WHEREAS, OER has requested that a P.E.-certified Hazardous Materials Remedial Action Report be submitted to it for review and approval at the conclusion of remedial/construction activities; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow on a site in an M1-1 zoning district, the construction of a five-story Use Group 3 school, contrary to ZR § 42-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 30, 2013” – Ten (10) sheets and “Received March 24, 2014” – Three (3) sheets and *on further condition*:

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

THAT the school will be limited to 89,556 sq. ft. of floor area (1.8 FAR) and a building height of 48 feet;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with OER’s approval of the Remedial Action Report;

THAT interior noise levels will be maintained at 45 dBA or below within the building in accordance with the noise attenuation notes on the BSA-approved plans;

THAT bus drivers will not idle in front of the building, the School or the site;

THAT enhanced crosswalks, crossing guards, and signage will be installed and maintained as reflected on the Proposed Pedestrian Safety Plan of the BSA-approved plan sheets;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

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

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

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

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 25, 2014.

293-13-BZ
CEQR #14-BSA-061Q

APPLICANT – Slater & Beckerman, P.C., for JSB Reality No 2 LLC, owner; Fitness International, LLC aka LA Fitness, lessee.

SUBJECT – Application October 23, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*LA Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 78-04 Conduit Avenue, west side of South Conduit Avenue between Linden Boulevard, and Sapphire Avenue, Block 11358, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 27, 2013, acting on Department of Buildings (“DOB”) Application No. 420516454, reads in pertinent part:

Proposed physical culture establishment in C2-2 (R4) zoning district is not permitted as-of-right and is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 (R4) zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second floors of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, and then to decision on March 25, 2014; and

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

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

WHEREAS, the subject site is an irregularly-shaped lot located at the southwest corner of the intersection of South Conduit Avenue and Sapphire Street, within a C2-2 (R4) zoning district; and

WHEREAS, the site has approximately 192 feet of frontage along South Conduit Avenue, approximately 706 feet of frontage along Sapphire Street, and 141,783 sq. ft. of lot area; and

WHEREAS, under construction at the site is a two-

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story commercial building that is proposed to have 239,886 sq. ft. of floor area (2.0 FAR) and 375 at-grade parking spaces; and

WHEREAS, the proposed PCE will occupy 10,740 sq. ft. of floor area on the first floor and 32,610 sq. ft. of floor area on the second floor for a total PCE floor area of 43,350 sq. ft. (0.3 FAR); and

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

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE are seven days per week, 24 hours per day; and

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

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

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

WHEREAS, at hearing, the Board directed the applicant to include a note on the plans indicating that no signage for the PCE would be provided on the Sapphire Street frontage; and

WHEREAS, in response, the applicant submitted amended plans including the requested signage note; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; however, the Board has reduced the term of the grant to reflect the period of time that the PCE operated without the special permit; 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 discussed in the Environmental Assessment Statement, CEQR No. 14BSA061Q dated October 18, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and

Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C2-2 (R4) zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second floors of a two-story commercial building, contrary to ZR § 32-10;; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 15, 2014 ” – Four (4) sheets and “Received March 10, 2014” – Two (2) sheets;; and *on further condition*:

THAT the term of the PCE grant will expire on March 25, 2024;

THAT all signage for the PCE will be limited to the South Conduit frontage of the site and will not be provided along Sapphire Street, as reflected on the BSA-approved plans;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Accessibility compliance under Chapter 9 of the New York City Building Code will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 25, 2014.

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62-12-BZ

APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of commercial building, contrary to use regulations (§22-00). R7-1 zoning district.

PREMISES AFFECTED – 614/618 Morris Avenue, northeastern corner of Morris Avenue and E 151th Street, Block 2411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

77-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Goldy Jacobowitz, owner.

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 91 Franklin Ave, 82’-3” south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

299-12-BZ

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for adjourned hearing.

347-12-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, Mitchell S. Ross, Esq., for X & Y Development Group, LLC., owner.

SUBJECT – Application December 26, 2012 – Variance (§72-21) to permit a transient hotel and community facility use (*North Queens Medical Center*), contrary to use regulations (§22-10), and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport.

R7-1 (C1-2) zoning district.

PREMISES AFFECTED – 42-31 Union Street, east side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11, 14, 15, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

160-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yitzchok and Hindy Blumenkrantz, owners.

SUBJECT – Application May 28, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1171-1175 East 28th Street, east side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

177-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Ratsenberg, owner.

SUBJECT – Application June 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, to be converted to a two-family home, contrary to floor area, lot coverage and open space (§ZR 23-141) and less than the required rear yard (§ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 134 Langham Street, west side of Langham Street between Shore Boulevard and Oriental Boulevard, Block 8754, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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Negative:.....0
ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

213-13-BZ

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

253-13-BZ

APPLICANT – Eric Palatnik, P.C., for Miyer Yusupov, owner.

SUBJECT – Application August 30, 2013 – Special Permit (§73-621) for the enlargement of an existing two-story, two-family home, contrary to floor area (§23-141B) regulations. R4B zoning district.

PREMISES AFFECTED – 66-31 Booth Street, north side of Booth Street between 66th and 67th Avenue, Block 3158, Lot 96, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

268-13-BZ

APPLICANT – Belkin Burden Wenig & Goldman, LLP, for Rachel H.Opland, Adrienne & Maurice Hayon, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-621) to permit legalize an enlargement to a three-story mixed use building, contrary to lot coverage regulations (§23-141). R5 zoning district.

PREMISES AFFECTED – 2849 Cropsey Avenue, north east side of Cropsey Avenue, approximately 25.9 feet northwest from the corner formed by the intersection of Bay 50th St. and Cropsey Avenue, Block 6917, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

318-13-BZ

APPLICANT – Bryan Cave LLP, for TJD 21 LLC, owners.

SUBJECT – Application December 13, 2013 – Variance (§72-21) to permit a five-story building containing retail and residential use, contrary to use regulations (§44-00). M1-5B zoning district.

PREMISES AFFECTED – 74 Grand Street, North side of Grand Street, 25 feet east of Wooster Street. Block 425, Lot 60, Borough of Manhattan.

COMMUNITY BOARD # 2M

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for continued hearing.

34-14-BZ & 498-83-BZ

APPLICANT – Rampulla Associates Architects, for Anthony Vasaturo, owner; MS Fitness, LLC, lessee.

SUBJECT – Application February 19, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Club Metro USA*) within an existing building.

Amendment of a previously approved variance (§72-21) to permit the change of use from a banquet hall (UG9 & 12),

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reduce building size and retain accessory parking in residential district. C8-1/R3X zoning district.

PREMISES AFFECTED – 2131 Hylan Boulevard, north side of Hylan Boulevard, corner formed by the intersection of Hylan Boulevard and Bedford Avenue, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 8, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

The resolution adopted on March 11, 2014, under Calendar No. 331-04-BZ and printed in Volume 99, Bulletin No. 11, is hereby corrected to read as follows:

331-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (*Century 21*). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum permitted floor area. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway. Block 63, Lots 6 & 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance, which, pursuant to ZR § 72-21, authorized in a C5-5 zoning district within the Special Lower Manhattan District the enlargement of an existing commercial building contrary to floor area regulations and waived the requirement to relocate two adjacent subway entrances in connection with the enlargement; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site spans the full length of the east side of Church Street, between Cortlandt Street and Dey Street, within a C5-5 zoning district, within the Special Lower Manhattan District; and

WHEREAS, the site comprises Lots 3 and 6, has approximately 170 feet of frontage along Cortlandt Street, approximately 215 feet of frontage along Church Street, approximately 188 feet of frontage along Dey Street, 38,178

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sq. ft. of lot area, and is located across the street from the World Trade Center site; and

WHEREAS, Lot 3 is occupied by a 34-story commercial building (the “Tower Building”) and Lot 6 is occupied by a five-story commercial building (the “Bank Building”); together, the buildings have 595,882 sq. ft. of floor area (15.6 FAR); and

WHEREAS, the applicant represents that Century 21 Department Store (“Century 21”) occupies the entirety of the Bank Building and floors one through six of the Tower Building, as well as the two buildings adjacent to the Tower Building on Block 63, Lot 1 (“10-12 Cortlandt Street”); and

WHEREAS, on February 15, 2005, under the subject calendar number, the Board granted a variance to permit: (1) a 4,583 sq.-ft. enlargement of the existing second-floor mezzanine of the Century 21 store in the Bank Building, while an equal amount of floor area was simultaneously retired via deed restriction from 10-12 Cortlandt Street; and (2) a waiver of the requirement to relocate two adjacent subway entrances in connection with the enlargement, contrary to ZR §§ 31-122 and 91-43; and

WHEREAS, the applicant now requests an amendment to permit the construction of a partial sixth floor atop the Bank Building, which will increase the floor area on the site by 4,622 sq. ft. from 595,882 sq. ft. (15.6 FAR) to 600,504 sq. ft. (15.73 FAR), and increase the height of the Bank Building from 71'-0" to 83'-0"; as in the previous grant, this enlargement will: (1) be offset by a deed restriction retiring 4,622 sq. ft. of floor area recorded against 10-12 Cortlandt Street; and (2) require a waiver of the requirement (ZR § 91-43) to relocate the two subway entrances adjacent to the site; and

WHEREAS, the applicant states that Century 21 will use the new sixth floor as an event space, which will allow for: (1) private exhibitions of new vendor merchandise or Century 21-curated merchandise; (2) presentations and functions hosted by Century 21 for their buyers and vendors, including catered dinners or luncheons; and (3) a designated area for executive meetings and sales force conferences; and

WHEREAS, the applicant asserts that the event space is critical to Century 21's remaining competitive in the shrinking department store market, and in support of this statement, the applicant provided an analysis that reflects that all other large New York City department stores have private event space; and

WHEREAS, the applicant notes that the neighborhood is characterized by high-density mixed commercial and residential uses and that a department store is entirely consistent with such uses; and

WHEREAS, as for the enlargement's impact upon adjacent properties, the applicant states that it is minimal; specifically, the applicant notes that the only adjacent building on the block—the 34-story Tower Building—is partially occupied by Century 21 and otherwise occupied by commercial uses; as such, the modest increase in height will have no impact; and

WHEREAS, as to the required waiver for the relocation

of two subway entrances, the applicant states that, as in the original grant, the costs of such relocation far exceed the benefits derived from the enlargement that triggers the relocation requirement; indeed, Century 21's most valuable selling space—at the cellar and first floor—would be reduced in order to accommodate the subway work; and

WHEREAS, in addition, the applicant asserts that the subway relocation requirement set forth in ZR § 91-43 was intended for major renovations of Lower Manhattan buildings and that minor increases in floor area to accommodate existing uses—the proposed enlargement increases the FAR by 0.13—were not contemplated despite the use of the defined term “enlargement”; and

WHEREAS, at hearing, the Board noted that the deed restriction retiring the floor area at 10-12 Cortlandt Street required under the prior grant had not yet been recorded; accordingly, the Board directed the applicant to record the deed restriction retiring 9,205 sq. ft. of floor area (which represents 4,583 sq. ft. of floor area from the original grant and 4,622 sq. ft. requested under this application); additionally, the Board directed the applicant to clarify the amount of available floor area at 10-12 Cortlandt Street and to clarify the impact of the proposed sixth floor on the Tower Building's windows; and

WHEREAS, in response, the applicant represented that the deed restriction would be recorded upon approval of this application; and

WHEREAS, as to the amount of available floor area at 10-12 Cortlandt Street, the applicant states that 10-12 Cortlandt Street has a maximum permitted floor area of 92,955 sq. ft., 20,412 sq. ft. of which are built and 9,205 sq. ft. of which are to be retired by the deed restriction discussed above, leaving 63,338 sq. ft. available for development; and

WHEREAS, as to whether the proposed sixth floor would obstruct any windows at the Tower Building, the applicant submitted a letter from the project architect stating that it would not; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated February 15, 2005, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received March 4, 2014’ - Five (5) sheets; and *on further condition*:

THAT the Tower Building and the Bank Building will have a maximum of 600,504 sq. ft. of floor area (15.73 FAR);

THAT the Bank Building will have a maximum height of 83'-0";

THAT prior to DOB's issuance of a permit, a deed restriction providing for the permanent and irrevocable retirement of 9,205 sq. ft. of floor area as to 10-12 Cortlandt Street will be executed and recorded, and then submitted to DOB, with a copy of same to the Board's Executive Director for placement in the case file;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, March 11, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.

*CORRECTION

This resolution adopted on March 4, 2014, under Calendar No. 78-13-BZ and printed in Volume 99, Bulletin No. 10, is hereby corrected to read as follows:

78-13-BZ

CEQR #13-BSA-103K

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 24, 2013, acting on Department of Buildings Application No. 310072818, reads, in pertinent part:

ZR 42-00 – Residential use is not permitted in manufacturing district; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district, the construction of a four-story residential building (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in the *City Record*, with a continued hearing on September 24, 2013, and then to decision on March 4, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, Councilperson Letitia James submitted a letter in support of this application; and

WHEREAS, the subject site is a rectangular lot located on the west side of Kent Avenue between Myrtle Avenue and Park Avenue, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district; and

WHEREAS, the site has 25 feet of frontage along Kent Avenue, a lot depth of 90 feet, and a lot area of 2,250 sq. ft.; and

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WHEREAS, the applicant states that the site is now vacant, but was previously occupied by a three-story mixed residential and commercial building that was built in or around 1905 and demolished in 2003; and

WHEREAS, the applicant notes that a variance application was filed for the site in 2008, under BSA Cal. No. 238-08-BZ; such application was dismissed for lack of prosecution on February 23, 2010; however, on July 24, 2012, the Board granted a rehearing of the application based on the applicant's revision of the proposal to comply with the R6 regulations with regard to floor area ratio, rear setback, and street wall location; and

WHEREAS, the applicant represents that the proposed residential building (Use Group 2), will have a floor area of 4,930.2 sq. ft. (2.2 FAR), a building height of 48'-11", a rear yard depth of 38'-0", and four dwelling units; and

WHEREAS, initially, the applicant proposed a building with a floor area of 5,680 sq. ft. (2.52 FAR) and a height of 53'-11"; and

WHEREAS, the applicant notes that Use Group 2 is not permitted in an M1-1 zoning district and that 65 percent of the site is within the M1-1 district and 35 percent of the site is within the R7A (C2-4) district; as such, ZR § 77-11, cannot be employed to extend the R7A (C2-4) use regulations to the M1-1 portion of the site; and

WHEREAS, accordingly, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lot's small size, shallow depth, and narrow width; (2) the adjacency of residential uses; (3) the district boundary, which divides the lot; and (4) the inability to merge the site with adjacent lots; and

WHEREAS, the applicant asserts that the site is small (2,250 sq. ft. of lot area), shallow (90 feet), and narrow (25 feet); and

WHEREAS, as such, the applicant asserts that it would be impractical to develop the site with a modern manufacturing use, which requires significantly larger floorplates than the site would yield; and

WHEREAS, the applicant notes that the site is the smallest and shallowest lot within a 400-foot radius in the subject M1-1 zoning district with frontage along Kent Avenue; and

WHEREAS, the applicant states that the infeasibility of establishing a manufacturing use on an undersized lot is compounded by the difficulties in locating such use on a site surrounded by residential neighbors; and

WHEREAS, in particular, the applicant states that the four adjacent buildings to the site and the building directly across the street contain residences; and

WHEREAS, the applicant states that the site is also uniquely burdened by being divided by the district boundary between an M1-1 zoning district (where the proposed use is not permitted as-of-right) and an R7A (C2-4) zoning district (where the proposed use is permitted as-of-right); and

WHEREAS, the applicant notes that while ZR § 77-11 typically affords relief for a split lot by allowing the use regulations of one district to extend to the other, such section would not allow for the proposed residential use, because less than 50 percent of the lot is within the R7A (C2-4) zoning district; and

WHEREAS, finally, the applicant asserts that the site is burdened by its inability to merge with another lot, which, when combined with its narrowness, shallowness, absence of an existing building, and split-lot condition, is unique in the subject M1-1 zoning district; and

WHEREAS, specifically, the applicant states that, of the 244 lots within the subject M1-1 zoning district, there are only 43 lots (including the site) that contain vacant or open parking uses; of these 43 lots, there are only 35 lots (including the site) with a lot width of 25 feet or less, 22 lots (including the site) with a lot depth of 90 feet or less, 19 lots (including the site) that have no potential to merge with the adjacent lots, and only two lots (including the site) that are split lots; and

WHEREAS, consequently, the applicant states that the site's unique physical conditions—its small lot size and shallow lot depth, the adjacency of residential uses, the split-lot condition, and the inability to merge—create an unnecessary hardship in developing the site in conformance with applicable regulations; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposed residential building with 2.2 FAR and the original proposal with 2.52 FAR, the applicant examined the economic feasibility of a two-story as-of-right manufacturing building with 2,250 sq. ft. of floor area; and

WHEREAS, the applicant concluded that the as-of-right scenario does not result in an acceptable rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of medium density residential, commercial, and community facility uses, including a six-story mixed residential and commercial building and three-

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story mixed residential and commercial building to the south, a four-story residential building to the west, a three-story mixed residential and commercial building to the north, and a three-story residential building directly across the street; in addition, the applicant notes that there is a five-story school (PS 157) on the block, and a large park (Taaffe Playground) that occupies the majority of the block immediately to the west of the site; and

WHEREAS, the applicant states, as noted above, that the site has historically been occupied by residential uses and that, as such, the proposal would restore a viable use; and

WHEREAS, likewise, the applicant asserts that the area within a 400-foot radius of the site has limited industrial uses, and, therefore, a conforming use would be less appropriate than the proposal; and

WHEREAS, the Board agrees that the character of the area is predominantly residential, and it finds that the introduction of four dwelling units does not impact nearby conforming uses; and

WHEREAS, as to bulk, at hearing, the Board expressed concerns about the compatibility of the originally proposed building height, street wall location, and attic with the surrounding area; and

WHEREAS, in response, the applicant amended its proposal, lowering the building height from 53'-11" to 48'-11", moving the street wall forward 5'-0" to align with the adjacent building's street wall, and removing the attic entirely, thereby reducing the proposed floor area from 5,680 sq. ft. (2.52 FAR) to 4,930 sq. ft. (2.2 FAR); and

WHEREAS, the applicant notes that the proposed building, as modified, complies with the floor area, height and setback regulations for an R6 zoning district; as such, it provides an appropriate transition from the higher bulk of the R7A (C2-4) zoning district along Myrtle Avenue to the three-story building to the north of the site, which has a height of approximately 30'-0"; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's small lot size, shallow lot depth, adjacency of residential uses, split-lot condition, and inability to merge; and

WHEREAS, finally, the Board finds that, as amended, the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617 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. 13BSA103K, dated February 28, 2014; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP reviewed and accepted the December 2013 Remedial Action Plan and the October 2012 site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's air quality assessment and determined that no significant stationary, mobile, and industrial source air quality impacts to the proposed project are anticipated; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, partially within an M1-1 zoning district and partially within an R7A (C2-4) zoning district, the construction of four-story residential building (Use Group 2), contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received "October 16, 2013"- Twelve (12) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a floor area of 4,930.2 sq. ft. (2.2 FAR), a building height of 48'-11", a rear yard depth of 38 feet, and four dwelling units, as illustrated on the BSA-approved plans;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 4, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.

*CORRECTION

The resolution adopted on February 25, 2014, under Calendar No. 127-13-A and printed in Volume 99, Bulletin Nos. 8-9, is hereby corrected to read as follows:

127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2013, acting on Department of Buildings (“DOB”) Application No. 110361554 reads, in pertinent part:

1. Proposed heretofore converted dwelling cannot be increased in height or stories as per MDL 171-2(a);
2. Proposed enlargement of the existing heretofore converted dwelling exceeds 25% of the area of the 3rd floor (fourth story) which is contrary to MDL 171-2(f); and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary height and bulk requirements in order to allow for the proposed partial one-story vertical enlargement of the subject three-story and basement residential building, contrary to MDL §§ 171(2)(a) and 171(2)(f); and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of West 87th Street, between West End Avenue and Riverside Drive, within an R8 zoning district within the Riverside Drive-West End Historic District; and

WHEREAS, the site has 20 feet of frontage along West 87th Street, a depth of approximately 100.6 feet, and a lot area

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of 2,013 sq. ft.; and

WHEREAS, the site is occupied by a three-story and basement non-fireproof residential building; and

WHEREAS, the applicant states that the existing building was constructed in approximately 1900 and is currently occupied by eight residential units, with two units per floor; and

WHEREAS, the subject building has a floor area of approximately 5,177.85 sq. ft. (2.57 FAR) and a height of approximately 47'-0"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a partial fourth floor containing an additional 743.3 sq. ft. of floor area; and

WHEREAS, the applicant states that the front of the proposed fourth floor will include a new, additional unit and the rear will be part of a duplex unit with the third floor; therefore, the proposal will increase the total number of dwelling units in the building from eight to nine; and

WHEREAS, the applicant further states that the proposed enlargement will increase the floor area of the subject building from 5,177.85 sq. ft. (2.57 FAR) to 5,921.15 sq. ft. (2.94 FAR) and increase the height of the building from 47'-0" to 56'-3"; and

WHEREAS, the applicant notes that the proposed fourth-floor enlargement will be set back 13'-5" from the building's front façade and slanted, so as not to be visible from the street; and

WHEREAS, the applicant also notes that it initially proposed a height of 57'-0", which was reduced at the request of the Landmarks Preservation Commission ("LPC"); and

WHEREAS, MDL § 171(2)(a) states that it is unlawful to "increase the height or number of stories of any converted dwelling or to increase the height or number of stories of any building in converting it to a multiple dwelling"; and

WHEREAS, because any increase in height or number stories of a converted multiple dwelling is prohibited, and the proposed increase of the existing building is from three stories to four stories and from 47'-0" to 56'-3", the Department of Buildings ("DOB") determined that the proposal does not comply with the requirements of MDL § 171(2)(a); and

WHEREAS, MDL § 171(2)(f) states that it is unlawful to "enlarge or extend any converted dwelling so as to exceed by more than twenty-five per centum the area which such dwelling had on any floor at the time of its conversion . . ."; and

WHEREAS, because the proposed 743.3 sq. ft. enlargement on the fourth floor exceeds 25 percent of the area on the third floor, DOB determined that the proposal does not comply with the requirements of MDL § 171(2)(f); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in approximately 1900; therefore, the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL §§ 171(2)(a) and 171(2)(f) relate to height and bulk; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(1); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant states that MDL §§ 171(2)(a) and 171(2)(f) prohibit a vertical enlargement of the subject building and that the third floor cannot practicably be enlarged horizontally to make up for this deficit because the existing building is located within an historic district and the LPC will not approve a third floor horizontal expansion; and

WHEREAS, the applicant represents that because a vertical enlargement is not permitted and a horizontal enlargement is impracticable, the MDL restrictions create a practical difficulty and an unnecessary hardship in that they prevent the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, in particular, the applicant notes that the subject district permits an FAR of 6.02, and the proposed enlargement would increase the FAR of the building from 2.57 to 2.94; and

WHEREAS, based on the above, the Board agrees that there is a practical difficulty and an unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 171(2)(a) and 171(2)(f) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to protect against dangers such as "overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire . . ."; and

WHEREAS, accordingly, the applicant represents that the proposed construction promotes the intent of the law because: (1) the new unit will cause minimal impact, as it will increase the unit count to nine, which is well below the 16 total permitted units in a building in an R8 zone; (2) it will be modest in size and set back from the front and rear facades, thereby providing sufficient light and air to the proposed fourth floor without diminishing access to light and air for

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other units in the building; and (3) it will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) sprinklers will be added to all common areas of the building; (2) new, steel stair ways will be installed; (3) all existing wood stair rails will be replaced with metal; (4) all doors leading to the apartments and cellar will have one-and-one-half-hour fireproof self-closing doors; (5) all public halls will have a new two-hour rated enclosure by an additional new layer of fire resistant gypsum board; (6) two layers of fire resistant gypsum board will be installed in the cellar ceiling; (7) a new layer of fire resistant gypsum board will be installed to the underside of the existing staircases and landings; and (8) all bedrooms will have ceiling mounted hard-wired smoke detectors and carbon-monoxide detectors; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height and bulk requirements of MDL §§ 171(2)(a) and 171(2)(f) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the applicant represents that the proposal will not affect the historical character of the site; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the LPC approving work associated with the proposed enlargement, dated February 5, 2014; and

WHEREAS, at hearing, the Board expressed concerns regarding the dimensions of the proposed dwelling units; and

WHEREAS, in response, the applicant submitted an amended statement clarifying the dimensions of the proposed units and confirming that such units meet the minimum requirements set forth in the Zoning Resolution; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the height and bulk requirements of MDL §§ 171(2)(a) and 171(2)(f) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated April 3, 2013, is modified and that the requested waivers are granted, limited to the decision noted above; *on condition* that construction will substantially conform to the plans filed with the application marked, "Received February 21, 2014" eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 5,921.15 sq. ft. (2.94 FAR); nine dwelling units; and a maximum building height of 56'-3", as reflected in the BSA-approved plans;

THAT the dimensions of the proposed dwelling units will be subject to DOB review;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 25, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.

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*CORRECTION

The resolution adopted on March 4, 2014, under Calendar No. 128-13-BZ and printed in Volume 99, Bulletin No. 10, is hereby corrected to read as follows:

128-13-BZ

APPLICANT – Sheldon Lobel, PC, for Zev and Renee Marmustein, owner.

SUBJECT – Application May 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); side yards (§23-461(a)); less than the required rear yard (§23-47) and perimeter wall height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1668 East 28th Street, west side of East 28th Street 200' north of the intersection formed by East 28th Street and Quentin Road, Block 6790, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated April 16, 2013, acting on DOB Application No. 301408046, reads in pertinent part:

5. Proposed plans are contrary to ZR § 23-141(b), in that the proposed floor area ratio exceeds the maximum permitted;
6. Proposed plans are contrary to ZR § 23-141(b), in that the open space provided is less than the minimum required;
7. Proposed plans are contrary to ZR § 23-141(b), in that the lot coverage proposed exceeds the maximum permitted;
8. Proposed plans are contrary to ZR § 23-461(a) in that the proposed enlargement increases the degree of non-compliance with respect to the minimum required side yards;
9. Proposed plans are contrary to ZR § 23-47, in that the proposed enlargement increases the degree of non-compliance with respect to the minimum required rear yard;
10. Proposed plans are contrary to ZR § 23-631(b), in that the proposed enlargement increases the degree of non-compliance with respect to the maximum permitted wall height; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not

comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, with a continued hearing on January 28, 2014, and then to decision on March 4, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of the original the application; and

WHEREAS, certain members of the surrounding community testified in opposition to this application (the “Opposition”), alleging that the proposed floor area (5,009.21 sq. ft. (1.0 FAR)) and absence of a side yard along the north side of the site (which was an extension of an existing zero lot line condition) were inconsistent with the character of the neighborhood; and

WHEREAS, in response, the applicant reduced the floor area from 5,009.21 sq. ft. (1.0 FAR) to 4,885 sq. ft. (0.98 FAR), eliminated the zero lot line condition, and provided a side yard with a minimum width of 3’-8¾”, which the Opposition found acceptable; as a result, the Opposition withdrew its objection to the application; and

WHEREAS, the subject site is located on the west side of East 28th Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the site has a total lot area of 5,000 sq. ft. and is occupied by a single-family home with a floor area of 2,795 sq. ft. (0.56 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks an increase in the floor area from 2,795 sq. ft. (0.56 FAR) to 4,885 sq. ft. (0.98 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 72 percent to 62 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 28 percent to 38 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant seeks to maintain one existing, complying side yard with a width of 8’-3” and increase the width of the existing non-complying side yard from 0’-0” (at its narrowest point) to 3’-8¾” (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each); and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 28’-5¼” to 20’-0”; a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, finally, the applicant seeks to maintain and extend its existing, non-complying perimeter wall height

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of 22'-6 $\frac{1}{8}$ "; the maximum permitted perimeter wall height is 21'-0"; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal to or less than the height of the adjacent building's non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height (22'-6 $\frac{1}{8}$ "') is less than the height of the adjacent building's non-complying perimeter walls facing the street (22'-8 $\frac{1}{4}$ "'), and the applicant submitted a survey in support of this representation; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that the proposed 0.98 FAR is consistent with the bulk in the surrounding area and notes that, in recent years, the Board has granted special permits for home enlargements on nearby streets (East 21st, East 22nd, and Avenue S) with FARs in excess of 1.0; and

WHEREAS, additionally, the applicant notes that a portion of the existing home is built to the north side lot line and the proposal includes the removal of that portion and the inclusion of a side yard with a width of 3'-8 $\frac{3}{4}$ "; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, lot coverage, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 18, 2014" – Twelve (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,885 sq. ft. (0.98 FAR), a minimum open space of 62 percent, a maximum lot coverage of 38 percent, a minimum rear yard depth of 20'-0", side yards with minimum widths of 8'-3" and 3'-8 $\frac{3}{4}$ "',

and a maximum perimeter wall height of 22'-6 $\frac{1}{8}$ "', as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 4, 2014.

***The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.**

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*CORRECTION

The resolution adopted on March 4, 2014, under Calendar No. 234-13-BZ and printed in Volume 99, Bulletin No. 10, is hereby corrected to read as follows:

234-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Dov Lipschutz, owner.

SUBJECT – Application August 16, 2013 – Variance (§72-21) for the enlargement of an existing two-family detached residence to be converted to a single-family home, contrary to minimum front yard (§23-45(a)); and less than the required rear yard (ZR §23-47). Special Permit (§73-621) for an enlargement which is contrary to floor area (ZR 23-141). R3-2 zoning district.

PREMISES AFFECTED – 1653 Ryder Street, aka 1651 Ryder Street, Located on the northeast side of Ryder Street between Quentin road and Avenue P, Block 7863, lot 18, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings (“DOB”), dated August 9, 2013, acting on DOB Application No. 320516811, reads in pertinent part:

1. FAR exceeds maximum permitted, contrary to ZR 23-141(b);
2. Proposed conditions increase the degree of non-compliance with respect to the required minimum front yard, contrary to ZR 23-45(a);
3. Proposed conditions violate required rear yard, contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 72-21 and 73-621, to permit, within an R3-2 zoning district, the conversion (from a two-family residence to a single-family residence) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio (“FAR”), front yard, and rear yard, contrary to ZR §§ 23-141, 23-45, and 23-47; and

WHEREAS, a public hearing was held on this application February 4, 2014, after due notice by publication in *The City Record*, and then to decision on March 4, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped

interior lot located on the east side of Ryder Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the site has 40 feet of frontage along Ryder Street and 3,855 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a two-story, two-family home with 1,985.41 sq. ft. of floor area (0.52 FAR), and an attic; and

WHEREAS, the applicant notes that the building has existing complying side yard widths of 5’-0” and 10’-10½”, a complying rear yard with a depth of 36’-7”, and a non-complying front yard ranging in depth from 9’-11” to 14’-1” (a minimum front yard depth of 15’-0” is required); and

WHEREAS, the applicant proposes to enlarge the existing cellar, first and second stories, and the attic of the building contrary to the FAR, front yard, and rear yard requirements, and increase the floor area from 1,985.41 sq. ft. (0.52 FAR) to 2,544.02 sq. ft. (0.66 FAR); the maximum permitted floor area is 1,927 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 2,313 sq. ft. (0.6 FAR); and

WHEREAS, the applicant also proposes to maintain a portion of its existing, non-complying front yard depth at 9’-11” and reduce a portion of its existing, non-complying front yard depth from 14’-1” to 12’-1” (a minimum depth of 15’-0” is required), and reduce its complying rear yard depth from 36’-7” to 24’-11” (a minimum depth of 30’-0” is required); and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted the building’s 1954 Certificate of Occupancy authorizing a two-family residence to demonstrate that the building existed as a residence well before June 20, 1989, which is the operative date within the subject R3-2 district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building, provided that the proposed floor area ratio does not exceed 110 percent of the maximum permitted (0.66 FAR);

WHEREAS, the applicant represents that the proposed floor area ratio is 110 percent of the maximum permitted (0.6 FAR); and

WHEREAS, therefore, the Board finds that the proposed increase in floor area is permitted under ZR § 73-621; however, ZR § 73-621 is not available to enlarge the building contrary to the front and rear yard requirements; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to ZR § 72-21 for those portions of the proposal; and

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WHEREAS, the applicant states that the irregular lot shape is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations; and

WHEREAS, the applicant states that the lot's shape is irregular, in that its rear lot line is diagonal, which creates a lot depth that varies from approximately 91 feet on the southeastern lot line to approximately 101 feet on the northwestern lot line; and

WHEREAS, the applicant asserts that such shape decreases the lot area available in the rear of the building, which contributed to the existing building being constructed closer to the front lot line and further into the required front yard, which, in turn, creates a practical difficulty enlarging the building in accordance with the front and rear yard requirements; and

WHEREAS, the applicant states that the lot shape is unique, and in support of this statement, submitted a study of the surrounding 24 blocks (approximately 900 sites); and

WHEREAS, the applicant represents that, according to the study, only two blocks out of 24 contain lots that share the site's diagonal rear lot line condition, and only 29 lots within those blocks have, as a result of their diagonal rear lot line, lot depths of 100 feet or less; and

WHEREAS, the applicant further distinguishes 23 of the 29 seemingly similar lots as follows: (1) 15 lots are overbuilt and cannot seek the same relief (a 10 percent FAR waiver under ZR § 73-621); (2) four lots are within .03 of the maximum permitted FAR and therefore cannot feasibly be enlarged; (3) two lots are corner lots without required rear yards; and (4) two have particularly wide frontages (61 feet and 80 feet), which mitigates the loss of space owing to their diagonal rear lot line; and

WHEREAS, consequently, the applicant states that only six lots out of 900 (less than one percent) nearby can be considered similar to the subject site; as such, the applicant asserts that the site's shape creates a unique practical difficulty in complying with the zoning regulations; and

WHEREAS, the applicant explored the feasibility of an as-of-right enlargement of the home; however, as noted above, such an enlargement would have to be accomplished entirely at the rear of the building and would result in a modest increase in floor area from 1,985.41 sq. ft. (0.52 FAR) to 2,313 sq. ft. (0.6 FAR); in contrast, the proposal allows for modest enlargements at the front and rear of the building; and

WHEREAS, accordingly, the applicant asserts that the lot shape creates practical difficulties in developing the site as-of-right; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board agrees that because of the site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that neither the

proposed variance, nor the special permit will negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by low-density, detached or semi-detached, two- or three-story homes, with varying rear and side yard depths, and, typically, shallower front yard depths and setbacks; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant states that the proposal will maintain the existing minimum front yard depth of 9'-11" (albeit with a slight decrease in the non-complying front yard depth at the northern side of the lot from 14'-1" to 12'-1"), decrease its complying rear yard by approximately 5'-0", exceed the permitted FAR by less than ten percent and comply in all other respects (side yards, height, and lot coverage) with the R3-2 bulk regulations; and

WHEREAS, as to adjacent uses, the applicant states that the proposal maintains the existing complying side yards, and therefore has no impact on the parcels directly north and south of the site; and while the majority of the enlargement is proposed at the rear of the building (its east side), the applicant notes that the nearest structures to the east are a swimming pool (on Lot 68) and a garage (on Lot 66); thus, the overall impact of the proposal on adjacent uses is minimal; and

WHEREAS, as to the proposed 0.66 FAR, the applicant notes that directly across the street, the homes on Lots 63 and 64 have 0.66 FAR and 0.75 FAR, respectively; and

WHEREAS, additionally, the applicant represents that there are 18 homes on an adjacent block along Ryder Street (Block 7862) with an FAR of 0.66 or greater, with 12 homes ranging from 0.72 FAR to 1.12 FAR; and

WHEREAS, at hearing, the Board directed the applicant to clarify the amount of floor area proposed in the attic; and

WHEREAS, in response, the applicant submitted a revised statement, which confirmed the location and amount of floor area proposed in the attic; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique conditions at the site; and

WHEREAS, the applicant asserts that the proposal is the minimum variance necessary to afford relief; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 72-21 and 73-621; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings ZR §§ 72-21 and 73-621, to

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permit, within an R3-2 zoning district, the conversion (from a two-family residence to a single-family residence) and enlargement of an existing residential building, which does not comply with the zoning requirements for FAR, front yard, and rear yard, contrary to ZR §§ 23-141, 23-45, and 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received February 19, 2014”-Twelve (12) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories and an attic, a maximum floor area of 2,544.02 sq. ft. (0.66 FAR), a front yard with a minimum depth of 9’-11”, a rear yard with a minimum depth of 24’-11”, and side yards with minimum widths of 5’-0” and 10’-10½”, as per the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT significant construction will proceed in accordance with ZR §§ 72-23 and 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 4, 2014.

***The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.**

*CORRECTION

This resolution adopted on March 11, 2014, under Calendar No. 274-13-BZ and printed in Volume 99, Bulletin No. 11, is hereby corrected to read as follows:

274-13-BZ

CEQR #14-BSA-045M

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., operator.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2013, acting on DOB Application No. 320782630, reads, in pertinent part:

Proposed physical culture establishment use is not permitted in a C1-3 zoning district, per ZR 32-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment (“PCE”) within the second story of a two-story residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in the *City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application, provided that the hours of operation are limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the subject site is located on the west side of Third Avenue, between 79th Street and 80th Street, within a C1-3 (R6B) zoning district within the Special Bay Ridge District; and

WHEREAS, the site has approximately 60 feet of frontage along Third Avenue and 6,000 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a two-story commercial building with approximately 11,400 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the applicant notes that the first floor of the building is occupied by a grocery store and the second floor is vacant; and

WHEREAS, the applicant notes that the building was constructed in or around 1931 and that the site has been subject to the Board's jurisdiction since July 24, 1959, when, under BSA Cal. No. 398-58-BZ, it granted a variance permitting a factory contrary to use regulations; in addition, later that year, on September 29, 1959, under BSA Cal. No. 399-58-A, the Board granted an appeal waiving the live load requirements for the second story; and

WHEREAS, the applicant states that the manufacturing use remained on the second story until around 1972, when the manufacturer vacated the space, and remained vacant until around 2000, when a martial arts studio leased the space and occupied it until March 2012; and

WHEREAS, the applicant acknowledges that a martial arts studio is a PCE and concedes that a variance was not obtained for the operation of the studio; however, the applicant represents that both the building owner and the martial arts studio were unaware that a martial arts studio is considered a PCE and that PCEs are not permitted within a C1-3 (R6B) district; and

WHEREAS, the applicant now seeks a variance to operate the subject PCE, which will be known as H.I.T. Factory, occupy 5,400 sq. ft. of floor area on the second story, and operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the second floor in conformance with applicable regulations: (1) the second floor's configuration, depth, and size; and (2) its absence of street-level exposure; and

WHEREAS, the applicant states that the historic configuration, depth, and size of the second floor—the characteristics that made it suitable for historic manufacturing use—render it unsuitable for modern conforming uses; and

WHEREAS, specifically, the applicant states that the second floor has a large open floorplate, which would require utilities upgrades and partition construction in order to accommodate a modern business or professional office, at significant cost; and

WHEREAS, the applicant also asserts that the large size (approximately 6,000 sq. ft.) and depth (approximately 90 feet) of the second floor make residential use infeasible; and

WHEREAS, in particular, the applicant states that the second floor would be able to provide a rear yard depth of only ten feet, which is 20 feet less than the minimum required for habitable rooms; accordingly, all dwelling units must use the Third Avenue frontage of the building for required light and ventilation, which effectively prohibits the rear of the building from being converted to residences; and

WHEREAS, the applicant also states that the lack of light and ventilation owing to the building's depth would

further decrease its attractiveness to modern business or professional offices, which prefer natural light; and

WHEREAS, similarly, the second floor's absence of street-level exposure makes it undesirable for local retail and service establishment uses, which rely primarily on pedestrian visibility and convenience of access in order to attract customers; as such, the rent for the second floor must be heavily discounted in order to offset the limitations of the space; and

WHEREAS, the applicant notes that the second floor's unattractiveness to tenants is evidenced by its 28-year vacancy, which, as noted above, began in 1972 and ended when a martial arts studio (a PCE) began occupying the space in 2000; and

WHEREAS, to support its claim of unique hardship, the applicant provided an area study of the 92 buildings within 600 feet of the site; and

WHEREAS, based on the study, only one other building has a second floor non-residential (community facility) use: 7817 Third Avenue, which has a Rite-Aid store on the first floor and "Tutor Time," an infant child care and preschool, on the second floor; and

WHEREAS, however, the applicant asserts that the Tutor Time building is distinguishable from the site, in that it has significantly more lot area (approximately 9,600 sq. ft.) and is located on a corner, where light and ventilation are available for residential or modern office uses; and

WHEREAS, the Board agrees with the applicant that the aforementioned unique physical conditions, when considered together, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in addition to the proposal, the applicant examined the economic feasibility of constructing a conforming office for a single user on the second floor; and

WHEREAS, the applicant concluded that the offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed PCE will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that a PCE occupied the building (albeit without the required variance, as noted above) from approximately 2000 until 2012, and that this

MINUTES

application has received letters of support from various community organizations as well as the community board; and

WHEREAS, the applicant represents that the surrounding community is characterized by low- to medium-density mixed residential and commercial uses, with many small business that are geared to local residents, and that the proposed PCE is consistent with such uses and will provide a valuable service; and

WHEREAS, as to the PCE's impact, the applicant represents that although light music may be played during workouts, the building's double concrete walls and extra padding will provide ample sound attenuation for both the neighboring buildings, and the grocery store use at the first floor; and

WHEREAS, in addition, consistent with the community board's request, as noted above, the hours of operation for the PCE will be limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the history of manufacturing use on the second floor and the building's depth; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on March 11, 2024; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; 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. 14BSA045M, dated September 23, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment ("PCE") within the second story of a two-story residential building, contrary to ZR § 32-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 23, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all signage at the site will be limited to C1 zoning district regulations;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the hours of operation for the PCE will be limited to seven days per week, from 7:00 a.m. to 10:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on March 11, 2016;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 11, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 12-13, Vo. 99, dated April 3, 2014.

BULLETIN

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April 9, 2014

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Tuesday, April 1, 2014**

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156-02-BZ	964 65 th Street, Brooklyn
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177-07-BZ	886 Glenmore Avenue, Brooklyn
213-13-A	300 Four Corners Road, Staten Island
140-11-A & 141-11-A	69-17 38 th Avenue, aka 69-19 38 th Avenue, Queens
296-13-A	280 Bond Street, Brooklyn
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310-13-BZ	459 East 149 th Street, Bronx

DOCKETS

New Case Filed Up to April 1, 2014

47-14-BZ

122-21 Merrick Boulevard, Property is situated on the northwest corner of Merrick Boulevard and Sunbury road, Block 12480, Lot(s) 32 & 39, Borough of **Queens, Community Board: 12**. Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (McDonald's) with an accessory drive-through facility. C1-2/R5D zoning district. C1-3/R5D district.

48-14-BZ

174 Falmouth Street, Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot(s) 196, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge a two story single family home in a residential area, seeks to vary the floor area, floor area ratio, open space and lot coverage requirements. R3-1 zoning district. R3-1 district.

49-14-A

5655 Independence Avenue, Arlington Avenue to Palisade Avenue btwn W 256th Street and Sigma Place, Block 5947, Lot(s) 120, Borough of **Bronx, Community Board: 8**. Proposed the construction of an enlargement to an existing community facility contrary to General City Law Section 35 . R1-1 zoning district. R1-1, R1-2 district.

50-14-BZ

825 Manhattan Avenue, North side of Calyer Street, 25 ft. west of Manhattan Avenue, Block 2573, Lot(s) 17, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment (Crunch Fitness) within an existing cellar and one-story commercial building. C4-3A zoning district. C4-3A 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

APRIL 29, 2014, 10:00 A.M.

ZONING CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 29, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

371-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 655 Fifth Avenue LLC, owner; Sator Realty, Ink, lessee.
SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Facility*) which expires May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 655 Fifth Avenue, northeast corner of Fifth Avenue and East 52nd Street, Block 1288, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

372-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Sator Realty, Ink, owner.

SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Facility*) which expires May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 663 Fifth Avenue, East side of Fifth Avenue, between East 52nd and 53rd Streets, Block 1288, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

43-14-A

APPLICANT – Rosan & Rosan, P.C., for Milburn Hotel, owner.

SUBJECT – Application March 14, 2014 – Extension of time to obtain a Class B Certificate of Occupancy to legalize a 120 Hotel units as provided in recent legislation under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district.

PREMISES AFFECTED – 242 West 76th Street, south side of West 76th Street, 112' west of Broadway, between Broadway and West End Avenue, Block 1167, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

277-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner.

SUBJECT – Application September 14, 2014 – Special permit (§73-49) to permit proposed roof top parking. M1-1 zoning district.

PREMISES AFFECTED – 1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Road, Block 4226, Lot 16, Borough of Bronx.

COMMUNITY BOARD #11BX

251-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hutch Realty Partners, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-49) to allow roof top parking in M1-1 zoning contrary to §44-11.

PREMISES AFFECTED – 1240 Waters Place, east side of Marconi Street, approximately 1678 ft. north of intersection of Waters Place and Marconi Street, Block 4226, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.

SUBJECT – Application January 8, 2013 – Variance (§72-21) to permit the legalization of an extension retail use contrary to zoning regulations. R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

319-13-BZ

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the parking requirements of §25-23 to permit the construction of a new, mixed used building on the subject site. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

COMMUNITY BOARD #11M

CALENDAR

325-13-BZ

APPLICANT – Eric Palatnik, P.C., for 3170 Webster Avenue LLC, owner; CT Norwood LLC, lessee.

SUBJECT – Application December 23, 2013 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (PCE) “Crunch Fitness” within a portions of commercial building, contrary to §32-10. C2-4/R7D zoning district.

PREMISES AFFECTED – 3170 Webster Avenue, East side of Webster Avenue at intersection with East 205th Street. Block 3357, Lot 37, Borough of Bronx.

COMMUNITY BOARD #7BX

Jeff Mulligan, Executive Director

1-14-BZ

APPLICANT – Law Office of Fredrick A Becker, for CPT 520 W 43 Owner LLC c/o Rose Associates, owner; Ewing Massage Entprise, LLC dba Massage Envoy, lessee.

SUBJECT – Application January 6, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (PCE) spa “Massage Envy” at the building contrary to (ZR)32-31. C6-4 zoning district.

PREMISES AFFECTED – 525 West 42nd Street, Northerly side of West 42nd Street 325 feet easterly of Tenth Avenue. Block 1071, Lot 42. Borough of Manhattan.

COMMUNITY BOARD #4M

2-14-BZ

APPLICANT – Law Office of Fredrick A.Becker, for SP101 W 15 LLC, owner; BFX West 15th Street LLC dba BFX Studio, lessee.

SUBJECT – Application January 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment/health club “BFX Studio” in portions of the cellar and first floor of the building. C6-2A/R8B zoning district.

PREMISES AFFECTED – 555 6th Avenue, Westerly side of 6th Avenue between West 15th Street and West 16th Street, Block 79, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #4M

4-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TrizecHahn, 1065 Ave. of the Americas LLC, owner; Blink 1065 6th Ave., Ink., lessee.

SUBJECT – Application January 9, 2014 – Special Permit (§73-36) to allow physical culture establishment “Blink Fitness” within portions of an existing commercial building contrary to (ZR)32-10 zoning resolution. C5-3(mid)(T) zoning district.

PREMISES AFFECTED – 1065 Avenue of The Americas, aka 111 West 40th Street, 112 West 41st Street. NWC of Avenue of the Americas and West 40th Street. Block 993, Lot 29. Borough of Manhattan.

COMMUNITY BOARD #5M

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 1, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for
DLC Properties, LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of
Time to obtain a Certificate of Occupancy of a previously
granted variance for the continued operation of a UG16 auto
repair shop with sales, which expired on June 8, 2010;
Waiver of the Rules. C2-2(R6B), R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard,
south side of Northern Boulevard, 350 East of intersection
of Northern Boulevard, and 206th Street, Block 7305, Lot
19, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the
Rules of Practice and Procedure, a reopening, and an
extension of time to obtain a certificate of occupancy for the
continued use of an auto repair shop with sales (Use Group
16), which expired on June 8, 2010; and

WHEREAS, a public hearing was held on this
application on March 11, 2014, after due notice by
publication in *The City Record*, and then to decision on April
1, 2014; and

WHEREAS, the premises and surrounding area had a
site and neighborhood examination by Commissioner Ottley-
Brown; and

WHEREAS, the subject site is located on the south side
of Northern Boulevard between 208th Street and Oceania
Street, partially within a C2-2 (R6B) zoning district and
partially within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since December 13, 1955 when, under the
subject calendar number, the Board granted a variance to
permit the reconstruction of an automotive repair facility in a
residential zoning district; and

WHEREAS, subsequently, the grant was amended and
the term extended at various times; and

WHEREAS, on May 25, 1999, the Board granted an

extension of term for ten years from the expiration of the
previous grant, and amended the grant to permit the existing
opening in the fence between the parking area of the subject
site and the owner’s property to the east, to expire on
November 3, 2008; and

WHEREAS, on March 6, 2001, the Board granted a
special permit to allow the construction of a second floor to
the existing commercial building to be occupied by office and
storage space; and

WHEREAS, subsequent grants extended the amount of
time to complete construction and obtain a certificate of
occupancy; and

WHEREAS, most recently, on December 8, 2009, the
Board granted an extension of term for ten years from the
expiration of the previous grant, to expire on November 13,
2018, and amended the grant to permit a change in the hours
of operation from Monday through Friday, from 8:30 a.m. to
5:00 p.m. to Monday through Friday, from 8:00 a.m. to 6:00
p.m. (the establishment is closed on the weekends); and

WHEREAS, under the 2009 grant, a certificate of
occupancy was to be obtained by June 8, 2010; however, the
applicant states that a certificate of occupancy has not yet been
obtained; in addition, the applicant notes that the owner no
longer plans to construct the second story authorized under the
2001 special permit described above; and

WHEREAS, accordingly, the applicant now requests
an extension of time to obtain the certificate of occupancy;
and

WHEREAS, based upon the above, the Board finds
that the requested extension of time to obtain a certificate of
occupancy is appropriate with certain conditions as set forth
below.

Therefore it is Resolved, that the Board of Standards and
Appeals *waives* the Rules of Practice and Procedure, *reopens*,
and *amends* the resolution, dated December 13, 1955, so that
as amended this portion the resolution reads: “to grant a one
year extension of time to obtain a certificate of occupancy, to
expire on April 1, 2015; *on condition* that the use and
operation of the site shall substantially conform to the
previously approved plans; and *on further condition*:

THAT a certificate of occupancy will be obtained by
April 1, 2015;

THAT all conditions from the prior resolution not
specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other
applicable provisions of the Zoning Resolution, the
Administrative Code and any other relevant laws under its
jurisdiction irrespective of plan(s) and/or configuration(s)
not related to the relief granted.”

(DOB Application No. 420055184)

Adopted by the Board of Standards and Appeals, April
1, 2014.

MINUTES

5-28-BZ

APPLICANT – Eric Palatnik, P.C., for Steven Feldman, owner; Anwar Ismael, lessee.

SUBJECT – Application August 20, 2013 – Amendment (§11-413) of a previously approved variance which permitted the operation of an automotive service station (UG 16B). The amendment seeks to change the use to a car rental establishment (UG 8). R6 zoning district.

PREMISES AFFECTED – 664 New York Avenue, west side of New York Avenue, spanning the entire length of the block between Hawthorne Street and Winthrop Street, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

156-02-BZ

APPLICANT – Herrick Feinstein Lullaby Jennifer Dickson, for 8021 15th Avenue Corp., owner; JP Morgan Chase & Co., lessee.

SUBJECT – Application August 1, 2013 – Extension of Term (§11-411) of an approved variance which permitted a car sales lot with accessory office and parking, which expired on August 5, 2013: Amendment (§11-413) to permit change in use to an accessory parking lot to an existing bank. R5B zoning district.

PREMISES AFFECTED – 964 65th Street, between Fort Hamilton Parkway and Tenth Avenue. Block 5750, Lot 49 (Tent 51). Borough of Brooklyn.

COMMUNITY BOARD #10BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of an approved Special Permit (§73-211) which permitted the reconstruction of an existing auto service station (UG 16B), which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough

of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application January 2, 2014 – Amendment of an approved Variance (§72-21) which permitted construction of a two-story and mezzanine, two-family residential building, contrary to front yard regulations (§23-45(a)); the amendment seeks to permit construction of a three-story, three-family residential building. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

215-13-A

APPLICANT – Anthony A. Lenza , owner
SUBJECT – Application July 16, 2013 – Appeal challenging denial of the Department of Building’s determination regarding floor area (§12-10 (12) (ii)). R1-1 zoning district.

PREMISES AFFECTED – 300 Four Corners Road, Block 894, Lot 235, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination for DOB Application No. 520079405, dated June 17, 2013, issued by the Department of Buildings (“DOB”) (the “Final Determination”); and

WHEREAS, the Final Determination states, in pertinent part:

The request to propose additional floor area deductions for insulated exterior walls complying with the conditions under the definition for “floor area” under ZR 12-10(12) that are located at the cellar, adjacent to the enclosed parking areas, and adjacent to the attic areas with less than 8 ft. of structural headroom for certain zoning districts and number of dwelling units is hereby denied.

MINUTES

“Floor area” is defined in ZR 12-10 as the “sum of the gross areas of the several floors of a building or buildings, measured from the exterior faces or exterior walls . . .” The definition also lists what floor area within the building includes and what floor area shall not include. Certain portions of the exterior walls that are energy efficient and meeting the conditions described in the definition in ZR 12-10 are not included in the floor area of the building.

However, any areas on any floor that are not counted towards the gross floor area of the building are not allowed additional floor area deductions, such as floor spaces for mechanical equipment that are located within the cellar floor; and

WHEREAS, a public hearing was held on this appeal on March 11, 2014, after due notice by publication in *The City Record*, and then to decision on April 1, 2014; and

WHEREAS, the site had visits by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the appeal is filed on behalf of the owner of the subject site, who contends that DOB’s determination was erroneous (the “Appellant”); and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the site is located on the south side of Four Corners Road, 163 feet from Todt Hill Road, within an R1-1 zoning district; and

WHEREAS, the site is occupied by a detached, three-story, single-family residential building (the “Building”); and

WHEREAS, on May 2, 2012, the Appellant filed an Alteration Type 1 Job Application to vertically and horizontally enlarge the cellar, first, and second floors of the Building; and

WHEREAS, DOB denied the application for its use of floor area deductions associated with energy efficient walls in areas that are not counted towards the gross floor area of the Building; and

WHEREAS, the Appellant requested a determination from DOB that the ZR § 12-10(12) definition of “floor area,” which excludes certain energy efficient exterior walls, up to eight inches, from being counted as floor area should be applied to the proposed installation of energy efficient exterior walls at the cellar level, the accessory parking garage, and in the attic; and

WHEREAS, the Final Determination held that the proposed energy efficient walls to be installed at the cellar level, accessory parking garage, and attic cannot be deducted from floor area pursuant to the definition of “floor area” at ZR § 12-10; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 Definitions

Floor area

"Floor area" is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#. In particular, #floor area# includes:

- (a) #basement# space, except as specifically excluded in this definition;
- (b) elevator shafts or stairwells at each floor;
- (c) floor space in penthouses;
- (d) attic space (whether or not a floor has been laid) providing structural headroom of five feet or more in R2A, R2X, R3, R4 or R5 Districts, eight feet or more in R1 and R2 Districts, other than R2A and R2X Districts, and eight feet or more for #single-# or #two-family residences# in R6, R7, R8, R9 and R10 Districts. For #buildings# with three or more #dwelling units# in R6, R7, R8, R9 and R10 Districts #developed# or #enlarged# prior to February 2, 2011, such attic space providing structural headroom of eight feet or more shall be considered #floor area#. For #buildings# with three or more #dwelling units# in R6, R7, R8, R9, and R10 Districts #developed# or #enlarged# after February 2, 2011, any attic space shall be considered #floor area#;
- (e) floor space in gallerias, interior balconies, mezzanines or bridges;
- (f) floor space in open or roofed terraces, bridges, breeze ways or porches, if more than 50 percent of the perimeter of such terrace, breeze way, or porch is enclosed, and provided that a parapet not higher than 3 feet, 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;
- (g) any other floor space used for dwelling purposes, no matter where located within a #building#, when not specifically excluded;
- (h) floor space in #accessory buildings#, except for floor space used for #accessory# off-street parking;
- (i) floor space used for #accessory# off-street parking spaces provided in any #story# after June 30, 1989:
 - (1) within #detached# or #semi-detached single-# or #two family residences# in R1-2A, R2A, R2X, R3, R4 or R5 Districts, except that:
 - (i) in R2A Districts, #floor area# within such #residences# shall include only floor space in excess of 300 square feet for one such space; and
 - (ii) in all R1-2A Districts, and in R3, R4A and R4-1 Districts in #lower density growth management areas#, #floor area# within such #residences# shall include only floor space in excess of 300 square feet for one such space and in excess of 500 square feet for two such spaces;
 - (2) within #buildings# containing #residences

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developed# or #enlarged# pursuant to the optional regulations applicable in a #predominantly built-up area#;

- (3) in excess of 100 square feet per required space in individual garages within other #buildings# containing #residences# (#attached buildings#, rowhouses or multiple dwellings) in R3-2, R4 or R5 Districts, except that in R3-2 Districts within #lower density growth management areas#, #floor area# shall only include floor space in excess of 300 square feet for one such space and in excess of 500 square feet for two such spaces. However, all of the floor space within any #story# in individual garages shall be considered #floor area# where, subsequent to June 7, 1989, the level of any #yard# except that portion of a #yard# in front of a garage on the #zoning lot# is lowered below the lower of:
 - (i) #curb level#; or
 - (ii) grade existing on June 7, 1989 . . .

However, the #floor area# of a #building# shall not include:

- (1) #cellar# space, except where such space is used for dwelling purposes. #Cellar# space used for retailing shall be included for the purpose of calculating requirements for #accessory# off-street parking spaces, #accessory# bicycle parking spaces and #accessory# off-street loading berths;
- (2) elevator or stair bulkheads, #accessory# water tanks, or cooling towers, except that such exclusions shall not apply in R2A Districts;
- (3) uncovered steps;
- (4) attic space (whether or not a floor has been laid) providing structural headroom of less than five feet in R2A, R2X, R3, R4 or R5 Districts, less than eight feet in R1 and R2 Districts, other than R2A and R2X Districts, and less than eight feet for #single-# or #two-family residences# in R6, R7, R8, R9 and R10 Districts. For #buildings# with three or more #dwelling units# in R6, R7, R8, R9 and R10 Districts #developed# or #enlarged# prior to February 2, 2011, such attic space providing structural headroom of less than eight feet shall not be considered #floor area#;
- (5) floor space in open or roofed terraces, bridges, breeze ways or porches, provided that not more than 50 percent of the perimeter of such terrace, breeze way, or porch is enclosed, and provided that a parapet not higher than 3 feet, 8 inches, or a

railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;

- (6) floor space used for #accessory# off-street parking spaces provided in any #story# . . .
- (12) exterior wall thickness, up to eight inches:
 - (i) where such wall thickness is added to the exterior face of a #building# wall existing on April 30, 2012, provided the added wall thickness has a thermal resistance (R-value) of at least 1.5 per inch; or
 - (ii) where such wall thickness is part of an exterior wall constructed after April 30, 2012, equal to the number of inches by which the wall's total thickness exceeds eight inches, provided the above-grade exterior walls of the #building# envelope are more energy efficient than required by the New York City Energy Conservation Code (NYCECC) as determined by the following:

- (1) the area-weighted average U-factor of all opaque above-grade wall assemblies shall be no greater than 80 percent of the area-weighted average Ufactor determined by using the prescribed requirements of the NYCECC; and
- (2) the area-weighted average U-factor of all abovegrade exterior wall assemblies, including vertical fenestrations, shall be no more than 90 percent of the area-weighted average U-factor determined by using the prescribed requirements of the NYCECC. . .

For the purposes of calculating compliance with this paragraph, (12)(ii), the term "above-grade" shall only include those portions of walls located above the grade adjoining such wall. Compliance with this paragraph shall be demonstrated to the Department of Buildings at the time of issuance of the building permit for such exterior walls. The total area of wall thickness excluded from the calculation of #floor area# shall be reflected on the next issued temporary or final certificate of occupancy for the #building#, as well as all subsequent certificates of occupancy; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the Zone Green Text Amendment, adopted by the City Council on April 30, 2012 allows that up to eight inches of thickness of exterior walls that meet the energy efficiency standards of the Zoning Resolution can be excluded from floor area calculations even when the area associated with the walls is already excluded from floor area calculations; and

WHEREAS, specifically, the Appellant cites to ZR § 12-10(12)(i) and (ii), which describe the criteria for the exclusion of energy efficient exterior walls; and

WHEREAS, the Appellant proposes to install new walls

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exceeding eight inches in thickness in the cellar and cellar addition, first floor, accessory garage, second floor, and attic; and

WHEREAS, the Appellant asserts that the area occupied by all energy efficient exterior walls, including those it proposes - in the cellar, accessory garage, and in areas with height less than eight feet - that meet the standards of the Zoning Resolution are deducted from floor area calculations by the Zone Green Text Amendment, regardless of whether there are other zoning provisions which already exclude the walls' thickness from floor area calculations; and

WHEREAS, the Appellant states that DOB deducted the area associated with up to eight inches of the walls' thickness on the first floor and portions of the second floor, but that it denied the request to deduct the area associated with the walls in the cellar, the accessory garage, and portions of the second floor and attic with heights less than eight feet; and

WHEREAS, the Appellant relies on (1) what he finds to be the plain language of the text; and (2) the broad intent to increase energy efficiency; and

WHEREAS, as to the text, the Appellant states that the plain reading of the Zoning Resolution supports the exclusion of any exterior wall constructed to energy efficient standards; and

WHEREAS, the Appellant asserts that there is not any distinction under the Zoning Resolution between energy efficient exterior walls with thickness that may be excluded from floor area calculations and energy efficient exterior walls with thickness that may not be excluded; and

WHEREAS, the Appellant asserts that absent a distinction between the walls granted exclusion from floor area and those not granted exclusion, all walls must be treated the same regardless of whether they are in portions of the building already eligible for floor area exclusions; and

WHEREAS, accordingly, the Appellant asserts that the space occupied by the thickness of all energy efficient exterior walls that satisfy the Zoning Resolution's standards may be excluded from floor area calculations; and

WHEREAS, as to the intent of the text, the Appellant cites to a purpose statement, which includes "to remove zoning impediments to the construction and retrofitting of green buildings" and that its focus was to promote energy-efficient building walls and reduce the City's energy use and carbon emissions; and

WHEREAS, the Appellant asserts that energy efficient walls throughout a building will increase the overall energy efficiency of the building and promote the Zone Green Text Amendment's purpose; and

WHEREAS, specifically, the Appellant states that insulated basements can help reduce energy costs, citing to the U.S. Department of Energy, and further that garages can be sources of heat loss/gain in a building; and

WHEREAS, the Appellant asserts that DOB's reading of the text eliminates the incentive for property owners to construct energy efficient walls in cellars, garages, and portions of buildings with heights less than eight feet; and

WHEREAS, the Appellant asserts that the absence of an

incentive is inconsistent with the Zoning Resolution and will prohibit reductions in energy costs and carbon emissions in the City; and

WHEREAS, the Appellant submitted a letter to the Department of City Planning (DCP) seeking a response to its assertion that the purpose and effect of the Zone Green Text Amendment is to maximize energy efficiency of the entire building so there is a cumulative effect on the City's overall energy usage and efficiency and that, accordingly, the text allows for floor area deductions for all energy efficient walls; and

WHEREAS, by letter dated March 27, 2014, DCP submitted a response to the Appellant's letter, which states that the Zone Green Text did not specify that there was a bonus increase in floor area for insulation and that the intent of the text was to encourage the retrofit of existing buildings, that would as a result of the additional insulation exceed the floor area permitted, and would therefore be prevented from installing additional insulation and to encourage the use of highly efficient insulating materials in new construction without penalizing the property owner for the amount of space the thicker insulation occupies; and

WHEREAS, accordingly, DCP states that it agrees with DOB that allowing the requested deduction would be the equivalent of double-dipping, which was not the intent of the Zone Green Text; and

DOB'S POSITION

WHEREAS, DOB asserts that energy efficient exterior walls may not be deducted from floor area calculation in portions of the building that are already excluded from floor area calculations (1) pursuant to the ZR § 12-10 definition of floor area; and (2) because to do so would constitute double-dipping; and

WHEREAS, DOB states that a property owner cannot exclude an area from floor area under the exclusions from floor area in the ZR § 12-10 definition of floor area and then seek to deduct the same area again, based on a separate exclusion from floor area in the ZR § 12-10 definition; and

WHEREAS, DOB cites to the Appellant's proposed plans, which do not identify any floor area for the cellar level or accessory garage and thus completely exempts those spaces, and which deduct 442.65 sq. ft. of attic floor area from the proposed 442.65 sq. ft. of attic floor area, which results in a net 0 sq. ft. of floor area for the attic; and

WHEREAS, DOB agrees with the Appellant that cellars, accessory garages, and certain attic floor area are properly excluded from floor area calculations, per the ZR § 12-10 definition of floor area; and

WHEREAS, DOB notes that ZR § 12-10 defines floor area as "the sum of the gross areas of several floors of a

1 DOB notes that it is currently reviewing the plans to confirm whether the proposed cellar and attic include space that should be included in floor area calculations and if the proposed use is consistent with DOB regulations. However, the Final Determination was based on plans that excluded the entire cellar from floor area calculations.

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building or buildings, measured from the exterior walls...” and then identifies particular areas that are included in the floor area calculation; and

WHEREAS, DOB notes that when calculating the floor area of spaces that are included in the floor area calculation, property owners must include the exterior walls of the areas that are included in the ZR § 12-10 floor area calculation; and

WHEREAS, DOB states that exterior walls are counted in spaces that are included as floor area, but when excluding a space from the floor area calculation, the exterior walls of that space are also excluded from the floor area calculation; and

WHEREAS, DOB states that a cellar level may be excluded from floor area because the ZR § 12-10(1) definition of floor area excludes “cellar space, except where such space is used for dwelling purposes;” and

WHEREAS, DOB notes that as indicated on the proposal’s zoning analysis, the Appellant excluded the cellar space from floor area and as such, did not include the exterior walls of the cellar space in the floor area calculations; and

WHEREAS, DOB states that an accessory parking garage may be excluded from floor area because the ZR § 12-10(6)(iv) definition of floor area excludes “floor space used for accessory off-street parking spaces provided in any story...located not more than 23 feet above curb level, in any other building...;” and

WHEREAS, DOB notes that the Appellant did not include the exterior walls of the accessory parking garage in the floor area calculations; and

WHEREAS, DOB states that the attic space may be excluded from floor area because the ZR § 12-10(4) definition of floor area excludes “attic space (whether or not a floor has been laid) providing structural headroom of...less than eight feet in R1 and R2 Districts;” and

WHEREAS, DOB notes that the Appellant did not include the exterior walls of the attic space; and

WHEREAS, DOB states that since the Appellant has already excluded the exterior walls from the floor area calculation in the cellar, accessory garage, and attic, the Appellant cannot then exclude (or deduct) the exterior walls a second time, effectively, based on the ZR § 12-10(12) definition of floor area which excludes certain energy efficient “exterior wall thickness, up to eight inches;” and

WHEREAS, DOB asserts that a property owner may not take a deduction twice for the same building condition and to do as the Appellant proposes would be to “double-dip” by subtracting floor area that was not included in the floor area calculations; and

WHEREAS, DOB states that if the noted energy efficient walls had not already been excluded from the floor area calculation, then they could be excluded from floor area; and

WHEREAS, DOB states that, in contrast, up to eight inches of thickness of energy efficient exterior walls would be excluded from floor area if the energy efficient exterior walls were added to a second floor bedroom as the bedroom would be included in the floor area calculation, but the eight-inch exterior wall would be excluded (or deducted); and

WHEREAS, DOB provided the following example of what would be considered “double dipping” in the context of floor area deductions: in certain districts, the ZR § 12-10 definition of floor area excludes 50 sq. ft. of space used for mechanical equipment from the first dwelling unit; when that mechanical space is located in a 1,000 sq.-ft. cellar which is not used for dwelling purposes, the entire 1,000 sq. ft. cellar is excluded from floor area, but not the 1,000 sq. ft. and the 50 sq. ft. mechanical deduction, which is subsumed in the cellar exclusion; and

WHEREAS, therefore, DOB contends that it properly determined that the space occupied by the thickness of the noted walls cannot be deducted from the floor area calculations; and

CONCLUSION

WHEREAS, the Board agrees with DOB and the Department of City Planning that the thickness of the proposed cellar, accessory garage, and attic walls cannot be deducted from the floor area calculations for the building; and

WHEREAS, the Board finds that, according to the plain text of the ZR § 12-10 definition of floor area, those portions of the Building are already excluded from floor area calculations; and

WHEREAS, specifically, the ZR § 12-10 definition of floor area identifies exclusions from floor area calculations for cellars (at sub-paragraph (1)); certain attic space (at sub-paragraph (4)); and certain accessory parking garages (at sub-paragraph (6)); and

WHEREAS, the Board finds that pursuant to the Zone Green Text Amendment, energy efficient walls to a thickness of eight inches were noted (at sub-paragraph (12)) as an additional, but separate, building element that can be excluded from floor area calculations; and

WHEREAS, the Board does not find any support in the text for the Appellant’s conclusion that multiple exclusions can apply to the same building condition; and

WHEREAS, the Board recognizes the intent of the Zone Green Text Amendment to promote energy efficient construction, but does not see any basis in the text that allows for a reduction in floor area from portions of buildings that are already excluded from floor area calculations; and

WHEREAS, the Board notes that the Zoning Resolution does not contemplate double-counting of exclusions and cites to DOB’s cellar mechanical space example and its conclusion that if cellar space is already excluded from floor area calculations it cannot also have a deduction for mechanical space within it; and

WHEREAS, the Board finds that such double-counting of floor area deductions or the practice of deducting floor area from portions of the building that do not actually generate floor area leads to absurd results from a zoning perspective; and

WHEREAS, the Board finds that the Appellant’s reading, although it may promote a broader incentive for energy efficient construction, is simply not supported by the text; and

WHEREAS, the Board limits its decision to the Final

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Determination and the plans associated with it, which reflect portions of the building that DOB concludes are not included in the floor area calculations, such as the cellar, garage, and portions of the attic with heights less than eight feet; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's determination that the sum of the space occupied by the cellar, garage, and attic walls cannot be deducted from the building's total floor area.

Adopted by the Board of Standards and Appeals, April 1, 2014.

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application December 18, 2013 – Extension of time and complete construction and secure Certificates of Occupancy. R5D zoning district.

PREMISES AFFECTED – 69-17 38th Avenue aka 69-19 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings' determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

94-13-BZ

CEQR #13-BSA-115Q,

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40th Avenue aka 38-78 12th Street, Block 473, Lot 473, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 28, 2013, acting on Department of Buildings Application No. 420812632, reads in pertinent part:

Daycare is classified under UG 3 by Department's Memo July 6, 1976 [and therefore] is not permitted in M1-3 district as per ZR 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-3 zoning district, the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013 and February 25, 2014, and then to decision on April 1, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of 40th Avenue and 12th Street, within an M1-3 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 548, 618, 619, and 621, has a lot area of approximately 16,139 sq. ft., 200 feet of frontage along 12th Street, and 74.34 feet of frontage along 40th Avenue; and

WHEREAS, the applicant represents that Lot 548 is currently occupied by a one-story and basement commercial building with 14,947 sq. ft. of floor area (0.93 FAR); Lots 618, 619, and 621 are currently a parking lot; and

WHEREAS, the applicant proposes to renovate the first story of the building to allow a Use Group 3 daycare ("the

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School”) with approximately 7,473 sq. ft. of floor area (0.46 FAR), and utilize Lots 618, 619, and 621 for accessory off-street parking and a play area; the applicant notes that the basement will not be altered under the subject application and will remain Use Group 6 (offices); and

WHEREAS, the applicant states that the renovated building will serve an estimated 117 children ranging in age from two to five years and approximately 25 employees, and provide related sanitary facilities and administrative offices; and

WHEREAS, the applicant states that the School will be in compliance with the New York Health Code on Child Care Services and will operate from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant states that the School requires a minimum of 7,500 sq. ft. in order to carry out its program (child care for 117 students) in accordance with the New York Health Code; and

WHEREAS, in addition, the applicant represents that its students are drawn from primarily within a half-mile radius of the site; and

WHEREAS, finally, the applicant notes that the owner will be directly involved in the management of the School, in order to minimize costs and to ensure ongoing compliance with the rules and regulations governing the operation of the School; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-3 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that it conducted a search of nearby residence and commercial districts with the following site criteria: (1) a minimum of 7,500 sq. ft. of program space in order to accommodate the School’s 117 students in accordance with the New York Health Code; (2) parking and recreation space; (3) minimal construction costs; (4) proximity to the neighborhood surrounding the site; and (5) proximity to public transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of five buildings within the area and on sites where Use Group 3 is permitted as-of-right: 34-19 Tenth Street; 34-51 Vernon Boulevard; 30-01 Northern Boulevard; 65-35 Queens Boulevard; and 45-02 Skillman Avenue; and

WHEREAS, the applicant represents that each building was unsuitable for the School, in that: 34-19 Tenth Avenue was not in close proximity to public transportation and its space was not suitable for children and would have required extensive renovations, including the installation of an elevator; 34-51 Vernon Boulevard had only 6,500 sq. ft. of usable space and no on-site parking area; 30-01 Northern Boulevard had only 5,000 sq. ft. of usable space, would

have required extensive renovations, had neither on-site recreation space, nor a nearby park; 65-35 Queens Boulevard had less than the required amount of usable space and is already occupied by a child care center on the second story; and 45-02 Skillman Avenue had only 3,000 sq. ft. of usable space; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located approximately 200 feet from an R6 zoning district, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that an ambient noise survey was conducted at the site, which indicated that the predominant noise source in the area is vehicular traffic, which according to the survey conducted during peak, weekday travel periods, averaged 27 dB(A); and

WHEREAS, the applicant notes that 27 dB(A) is well below the 45 dB(A) that is considered acceptable according to the CEQR Technical Manual, and that such low noise level within the building is owing to the fact that it was built with sound-attenuating exterior wall and window construction; and

WHEREAS, the Board finds that the conditions surrounding the site and the building’s use will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-3 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the majority of students will be dropped off by parents commuting on the subway (F train), which is located less than two blocks from the site; and

WHEREAS, as for vehicular traffic, the applicant states that, based on its assessment of existing traffic conditions in the vicinity, the School can operate safely without significant impacts; and

WHEREAS, in particular, the applicant states that

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students will enter and exit the building via an entrance on 12th Street, which the applicant notes is not a primary thoroughfare based on its study of traffic patterns; in addition, a four-way stop sign and pedestrian lanes have been installed at the intersection of 12th Street and 40th Avenue; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, the applicant represents that, to the extent deemed appropriate by DOT, it will install additional signage, “School Crossing” pavement markings, and crossing guards in the vicinity; and

WHEREAS, by letter dated April 8, 2013, DOT states that it has no objection to the proposed construction and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Type II action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 13BSA115Q, dated May 23, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2013 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant’s March 2014 Air Quality Impact Assessment and determined that no significant air quality impacts to the proposed project are anticipated; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, on a site within an M1-3 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 20, 2013” – (2) sheets and “May 24, 2013”-(4) sheet; and *on further condition*:

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 any change in the operator of the school requires review and approval by the Board;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 1, 2014.

103-13-BZ

APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC, owner.

SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building, contrary to §42-10 zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256’ west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough

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of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for deferred decision.

281-13-BZ

CEQR #14-BSA-051M

APPLICANT – Joshua Rinesmith, Warshaw Burstein LLP for FC-Canal LLC, owner; 320 Canal Fitness Group, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building. C6-2A zoning district.

PREMISES AFFECTED – 350-370 Canal Street, premises is comprised of 3 properties located on the west portion of block 211 at the intersection of Canal Street and Church Street. Block 211, Lot(s) 3, 29, 7501. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 24, 2013, acting on Department of Buildings (“DOB”) Application No. 121789181, reads in pertinent part:

Proposed use as a physical culture establishment is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-2A zoning district within the Special Tribeca Mixed Use District, the operation of a physical culture establishment (“PCE”) within portions of the cellar of a two-story commercial building and within portions of the cellar and first story of a 21-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, and then to decision on April 1, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 1, Manhattan, expresses no objection to this application; and

WHEREAS, the subject site is a single zoning lot comprising Tax Lots 3, 29, and 7501, which occupies the eastern portion of the block bounded by Canal Street, Church Street, Lispenard Street, and West Broadway, within a C6-4A zoning district within the Special Tribeca Mixed

Use District; and

WHEREAS, the site has approximately 217 feet of frontage along Canal Street, approximately 153 feet of frontage along Church Street, approximately 226 feet of frontage along Lispenard Street, and 41,739 sq. ft. of lot area; and

WHEREAS, the site is occupied by three buildings; Lot 29 is occupied by a 21-story hotel building, Lot 3 is occupied by a two-story commercial building, and Lot 7501 (formerly Lot 11; a/k/a 7-11 Lispenard Street) is occupied by a six-story mixed residential and commercial building; the buildings have a total floor area of 224,404 sq. ft. of (5.37 FAR); and

WHEREAS, the PCE is proposed to occupy 620 sq. ft. of floor area on the first story of the 21-story hotel building and a total of 12,786 sq. ft. of floor space in the cellars of the 21-story building and the two-story commercial building, for a total PCE size of 13,406 sq. ft. of floor space; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board also finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No.14BSA051M dated October 3, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

MINUTES

Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-2A zoning district within the Special Tribeca Mixed Use District, the operation of a PCE within portions of the cellar of a two-story commercial building and within portions of the cellar and first story of a 21-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 10, 2014 – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 1, 2014.

291-13-BZ

CEQR #14-BSA-059K

APPLICANT – Eric Palatnik, P.C., for 840-842 LLC, owner; Crunch LLC, lessee.

SUBJECT – Application October 22, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch LLC*) within a portion of an existing building. C8-2 zoning district.

PREMISES AFFECTED – 842 Lefferts Avenue, south side of Lefferts Avenue, approximately 262’ west of intersection of Utica Avenue and Lefferts Avenue, Block 1430, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 8, 2013, acting on Department of Buildings (“DOB”) Application No. 320907202, reads in pertinent part:

Proposed PCE in a C8-2 district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and on the first, second and third stories of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, and then to decision on April 1, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Lefferts Avenue between Schenectady Avenue and Utica Avenue, within a C8-2 zoning district; and

WHEREAS, the site has approximately 130 feet of frontage along Lefferts Avenue and 7,540 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story commercial building with 18,213 sq. ft. of floor area (2.42 FAR); the applicant notes that the site has been under the Board’s jurisdiction since January 7, 1964, when, under BSA Cal. No. 110-63-BZX, the Board permitted an extension of time to complete construction of the building under ZR § 11-32; most recently, on August 16, 2005, the Board, under BSA Cal. No. 321-04-BZ, granted a special permit for the conversion of the building from commercial

MINUTES

use to a school; and

WHEREAS, the applicant states that the conversion authorized by the Board under BSA Cal. No. 321-04-BZ did not occur and that the building was used as offices until it recently became vacant; and

WHEREAS, the applicant now proposes to convert the entire building to PCE use; specifically, the PCE will occupy all three stories of the building (18,213 sq. ft. of floor area) and the cellar (6,071 sq. ft. of floor space), for a total PCE size of 24,284 sq. ft. of floor space; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board also finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA059K dated October 14, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C8-2 zoning district, the operation of a PCE in the cellar and on the first, second and third stories of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 9, 2014" – Nine (9) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 1, 2014.

130-13-BZ

APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue,

MINUTES

southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #17BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

178-13-BZ

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) to allow an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single-family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

250-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group. LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west

side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

252-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eli Schron, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R-2 zoning district. PREMISES AFFECTED – 1221 East 22nd Street, east side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

270-13-BZ

APPLICANT – Eric Palatnik, P.C., for Margaret Angel, LLC, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 288 Dover Street, Dover Street, south of Oriental Boulevard, Block 8417, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

273-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for 321-23 East 60th Street LLC, owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the development of an eight-story residential building containing 28 dwelling units, contrary to use regulations (§32-10). C8-4 zoning district.

PREMISES AFFECTED – 321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit. Block 1435, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

MINUTES

Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

275-13-BZ

APPLICANT – Warshaw Burstein, LLP, for Kedzkidz Realty LLC., owner; Antonaccio-Crous, LLC, lessee.

SUBJECT – Application September 26, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Bikram Yoga Soho*). M1-5 zoning district.

PREMISES AFFECTED – 404-406 Broadway, east side of Broadway south of its intersection with Canal Street in TriBeCa, Block 196, Lot 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

285-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 495 Flatbush Ave, LLC, owner; 495 Flatbush Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). C8-6 zoning district.

PREMISES AFFECTED – 495 Flatbush Avenue, east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one-story residential home, contrary to front yard (§23-45); side yard (§23-161); floor area and lot coverage (§23-141) and off street parking requirements (§25-621(B)). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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Tuesday, April 8, 2014**

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51-14-BZ

1369 East 28th Street, East side of East 28th Street, 220 feet north from Avenue N, Block 7664, Lot(s) 17, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of an existing single family residence, contrary to §23-47 for rear yard §23-141 floor area, §23461 side yard. R2 zoning district.. R-2 district.

52-14-BZ

1339 East 28th Street, East side of East 28th Street, 320 feet South of Avenue M, Block 7664, Lot(s) 28, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of an existing single family residence contrary to §23-47 rear yard, §23-141 floor area, min open space §23-461 side yard. R2 zoning district.. R2 district.

53-14-BZ

12 West 27th Street, 2nd floor, 27th Street between Broadway and 6th Avenue, Block 828, Lot(s) 56, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow a physical culture establishment (Exceed Fitness). M1-6 zoning district. M1-5 district.

54-14-BZ

1506 Decatur St, Nor east corner of Irving Avenue and Decatur Street, Block 3542, Lot(s) 12, Borough of **Queens, Community Board: 05**. Variance (§72-21) to permit development of a (3) three story penthouse residential building contrary to use regulations (§42-00). M1-4 zoning district. M1-4 district.

55-14-BZ

388 Bridge Street, Through lot parcel on block bounded by Lawrence, Fulton Willoughby, and Bridge Streets in Brooklyn, Block 152, Lot(s) 1001/06, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to allow the physical culture establishment (388 Athletic Club,)to operate on the fifth and sixth floors of a new 53 Story commercial and residential building. C6-45 zoning district. C6-45/DB 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

MAY 6, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 6, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.
SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.
PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

611-52-BZ

APPLICANT – Gerald J. Caliendo, for John Blumenfield - HL Dalis, Inc., owner.
SUBJECT – Application October 15, 2013 – Extension of Term (§11-411) of a previously approved variance permitting a one story warehouse building located in a residential zoning district, which expired on May 5, 2013. R5 zoning district.

PREMISES AFFECTED – 35-35 24th Street, east side of 24th Street, 130.63 feet south from the intersection of 35th Avenue and 24th Street, Block 338, Lot 8, Borough of Queens.

COMMUNITY BOARD #1Q

322-05-BZ

APPLICANT – Eric Palatnik P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application March 7, 2014 – Extension of Time to Complete Construction for a previously granted Variance (72-21)ZR for an enlargement of an existing two single story plus cellar single family home and the change in use to a community use facility (*Queens Jewish Community Council*) which expired on March 7, 2014. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

173-09-BZ

APPLICANT – Goldman Harris LLC, for 839-45 Realty LLC, owner; Ranco Capital LLC, lessee.

SUBJECT – Application March 25, 2014 – Extension of Time to Complete Construction of a previously granted

Variance (72-21) for the construction of a four story mixed use building contrary to use regulations which expires on December 14, 2014. C8-2/M1-1 zoning district.

PREMISES AFFECTED – 839-845 Broadway aka 12-14 Park Street, southeast corner of Broadway and Park Street, Block 3134, Lots 5, 6, 10, 11, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEALS CALENDAR

304-13-A

APPLICANT – Simons & Wright, for 517 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2 WCH special district.

PREMISES AFFECTED – 517-519 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #4M

312-13-A

APPLICANT – Simons & Wright, for Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2 WCH special district.

PREMISES AFFECTED – 521-525 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #4M

313-13-A

APPLICANT – Simons & Wright, for 531 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2 WCH special district.

PREMISES AFFECTED – 531 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #4M

CALENDAR

ZONING CALENDAR

277-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of new 12-story mixed-use building with underground parking, two floors of community facility (*church*) space, with 125 multi-family residential units requires multiple bulk/are variances. R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

279-13-BZ

APPLICANT – Warshaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*fitness center*) on portions of the cellar and first floors and the entire second and third floors of a new building to be constructed. M1-6 zoning district.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150' West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the development of a residential building (Use Group 2) with ground floor commercial use Group 6) based on the conditions peculiar to the property. M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

331-13-BZ

APPLICANT – Warshaw Burstein, LLP, for Isaac Chera, owner; 2007 86th Street Fitness Group, LLP, lessee.

SUBJECT – Application December 31, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*fitness center*) within the existing building at the Premises. C4-2 zoning district.

PREMISES AFFECTED – 2005 86th Street aka 2007 86th Street, north side of 86th street, west of its intersection with 20th Avenue, Block 6346, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

3-14-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of Saint David's School. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of Manhattan.

COMMUNITY BOARD # 8M

7-14-BZ

APPLICANT – Greenberg Traurig, LLP, for Rockaway Realty LLC, owner; 1380 Rockaway Parkway Fitness Group, LLC, lessee.

SUBJECT – Application January 16, 2014 – Special Permit (§73-36) to permit the conversion of the existing on-story, plus cellar to a physical culture establishment (*Planet Fitness*) in connection with an application to rezone the property from an R5D/C1-3(Z) to an R5D/C2-3(ZD).

PREMISES AFFECTED – 1380 Rockaway Parkway, west side of Rockaway Parkway, midblock between Farragut Road and Glenwood Road, 204.85' south of Farragut Road, Block 8165, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #18BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 8, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

960-67-BZ & 116-68-BZ

APPLICANT – Akerman LLP By Steven Sinacori for 40
CPS Associates, LLC, owner.

SUBJECT – Application December 26, 2013 – Amendment
of two previously approved variances (§72-21) to allow the
merger of the zoning lots and the transfer of development
rights from 36 to 40 Central Park South. R10-H zoning
district.

PREMISES AFFECTED – 36 & 40 Central Park South,
South side of Central Park South between 6th and 5th
Avenues. Block 1274, Lot(s) 6, 11, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an amendment to two existing variances, to allow (1) the
merger of Lot 6 and Lot 11 into a single zoning lot; (2) the
potential transfer of unused development rights from Lot 6 to
Lot 11; and (3) an amendment to the site plan to reflect the
proposed merger of Lot 6 and Lot 11; and

WHEREAS, a public hearing was held on this
application on March 25, 2014, after due notice by publication
in *The City Record*, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan, Vice-
Chair Collins, Commissioner Hinkson, and Commissioner
Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan,
recommends approval of this application on the condition that
the applicant’s Inclusionary Housing development partner
appear before it; any future modifications are presented to it
and the Board of Standards and Appeals; and the applicant
will discuss design with it; and

WHEREAS, the application is brought on behalf of the
owners of Lot 6 (the “Lot 6 Owner”) and Lot 11 (the “Lot 11

Owner”) (collectively, “the applicants”); and

WHEREAS, Lot 6 (which includes a 40 Central Park
South building and a 41 West 58th Street building) is a through
block site located partially within an R10H zoning district,
partially within a C5-1 zoning district, and partially within a
C5-2.5(MiD) zoning district; and

WHEREAS, on June 25, 1968, pursuant to BSA Cal.
No. 116-68-BZ, the Board granted a variance for Lot 6 (the
“Lot 6 Variance”) that allowed an existing professional office
located on a portion of the first floor of a 21-story building in
what was then an R10 zoning district to be converted to an
eating and drinking establishment; the restaurant use is located
entirely within the building at 40 Central Park South; and

WHEREAS, on December 21, 1999, the Board
approved an amendment of the variance to permit the
enlargement of the eating and drinking establishment; and

WHEREAS, Lot 6 has a lot area of 25,607.1 sq. ft., 125
feet of frontage on Central Park South, and 130 feet of
frontage on West 58th Street; it is occupied by two residential
buildings: 41 West 58th Street, located on the southern portion
of the site, and 40 Central Park South, located on the northern
portion of the site; and

WHEREAS, the Lot 6 Owner states that the combined
floor area for the two buildings on Lot 6 is 251,816 sq. ft. and
that there are 4,255 sq. ft. of unused floor area under the
applicable maximum 10.0 FAR 51,214 sq. ft. of additional
unused floor area available through the Inclusionary Housing
program; and

WHEREAS, accordingly, the Lot 6 Owner represents
that there is a potential for a total of 55,469 additional sq. ft. of
floor area available on Lot 6; and

WHEREAS, Lot 11, which currently constitutes a
separate zoning lot, is a through block site partially within an
R10H zoning district and partially within a C5-2.5(MiD)
district; and

WHEREAS, on November 13, 1968, at which time Lot
11 was located partially within an R10 zoning district and
partially within a C5-3 zoning district, pursuant to BSA Cal.
No. 960-67-BZ, the Board granted a variance of the
applicable use and bulk regulation for the Lot 11 building (the
“Lot 11 Building”) to allow transient hotel use within the R10
zoning district and to allow waivers to FAR, rear yard, and sky
exposure plane regulations along Central Park South and West
58th Street; and

WHEREAS, the Board approved three amendments in
the 1970s and 1980s, which allowed for massing
reconfiguration, the enlargement of the banquet hall, and the
enclosure of the rooftop recreation area; and

WHEREAS, Lot 11 has a lot area of 20,284.8 sq. ft.
with 75 feet of frontage on Central Park South and 127 feet of
frontage on West 58th Street; it is occupied by a 44-story
transient hotel; and

WHEREAS, the Lot 11 Owner states that the R10H

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portion of Lot 11 is subject to a base 10.0 FAR, which may be increased to 12.0 FAR through the Inclusionary Housing program; the C5-2.5(MiD) portion of Lot 11 is subject to a maximum 12.0 FAR; and

WHEREAS, the Lot 11 Owner asserts that under current zoning, Lot 11 may be developed with up to 243,418 sq. ft. of floor area; and

WHEREAS, pursuant to the Board's approval, the Lot 11 Building contains 369,558 sq. ft. of floor area, which exceeds the amount of floor area currently permitted on Lot 11 by 126,140 sq. ft.; and

WHEREAS, the Lot 11 Owner states that there are 14,297 sq. ft. of unused floor area under on Lot 6 (if tenant recreation space is included per ZR § 81-241) and 41,172 sq. ft. of additional unused floor area available through the Inclusionary Housing program (per ZR § 23-951); and

WHEREAS, the applicants now seek the Board's consent to merge Lot 6 and Lot 11 into a single zoning lot, which would allow for the transfer of excess development rights from Lot 6 to Lot 11; and

WHEREAS, the applicants seek authorization to ultimately transfer up to 55,469 sq. ft. of unused development rights (provided the recreation space and Inclusionary Housing requirements are satisfied) from Lot 6 to adjacent Lot 11; and

WHEREAS, the applicants also propose to modify the site plan to reflect the merger of Lots 6 and 11 within the subject zoning lot; and

WHEREAS, the applicants represent that the proposed zoning lot merger and floor area transfer will not have any effect on the existing buildings located on Lot 6 or on the operation of the eating and drinking establishments therein; and

WHEREAS, the applicants assert that a transfer of the unused floor area from Lot 6 should be allowed because it is not in conflict with the Lot 6 Variance; and

WHEREAS, the applicants represent that the proposed transfer of development rights is consistent with the Court's decision in Bella Vista v. Bennett, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, the applicants state that its application for the original 1968 variance and 1999 amendment for Lot 6 reflect that the unused development rights were not assumed or considered in the Board's analysis; and

WHEREAS, the applicants state that the documents in support of the original variance discuss only the economics of the ground floor space that was subject to the variance, specifically its limited utility and value as a professional office and its significantly greater value for a restaurant use; and

WHEREAS, the applicants state that the submissions associated with the 1999 amendment to the Lot 6 Variance

analyze the economic viability of the existing Lot 6 buildings with and without the proposed expansion of the restaurant use but are silent on the potential use and value of Lot 6's unused development rights; and

WHEREAS, the applicants assert that at the time of the 1968 Lot 6 Variance and 1999 amendment, there would have been little demand for, and accordingly virtually no value in, Lot 6's unused development rights; and

WHEREAS, further, the applicants note that at all relevant times, the subject block (Block 1274) was fully developed with substantial buildings and the buildings on Lot 6 were full occupied with residential use; and

WHEREAS, specifically, the applicants note that Lot 6 was adjacent to the 44-story Park Lane Hotel to the east, developed in the late 1960's pursuant to a Board variance which included a floor area waiver; and adjacent to the 35-story Hotel St. Moritz and a ten-story residential condominium to the west; and

WHEREAS, accordingly, the applicants assert that at the time of the Board's prior approvals, there were no viable receiving sites for Lot 6's unused development rights and, consequently, they had little if any value; and

WHEREAS, the applicants assert that the historic records and market conditions support the conclusion that the unused developed rights were not considered by the Board in its determination that the 1968 variance was the minimum necessary to resolve the economic hardship on the site; and

WHEREAS, the applicants state that an approval of the requested development rights transfer from the subject site does not undermine the integrity of the Board's earlier findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in Bella Vista; and

WHEREAS, the applicants conclude that the use of the development rights as a result of the proposed zoning lot merger is therefore not inconsistent with the Board's prior approvals; and

WHEREAS, the Board notes that Bella Vista concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights-- from a site in which the Board granted a use variance to permit operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership-- for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, inter alia, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board notes that, unlike in Bella Vista, Lot 6 and the receiving development site (Lot 11) have been under separate, unrelated ownership since at least the time of

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the Board's 1968 grant and the owner of the variance site therefore lacked control over either the timing of new development on the adjacent property or the use of the development rights for such a development; and

WHEREAS, the Board also notes that a brief period of time elapsed between the date of the Bella Vista variance grant and the date of the subsequent permit application which also distinguishes that case from the proposed development rights transfer under review in the subject application; and

WHEREAS, the Board notes that in Bella Vista, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, while the variance for the subject site was granted in 1968, 45 years before the filing of the instant application; and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the Bella Vista case from the instant case and supports the conclusion that the use of Lot 6's unused development rights was not foreseeable by the Lot 6 Owner or the Board; and

WHEREAS, the Board also notes that the 1968 variance was for the conversion of a portion of the first floor of one of two buildings on a zoning lot from one non-conforming use to another non-conforming use, which represents a relatively small portion of the zoning lot, occupied by two buildings and more than 250,000 sq. ft. of floor area, that is subject to the variance; and

WHEREAS, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) finding, at the time that they were made; and

WHEREAS, the Board agrees that the unused development rights were not considered in its analysis for the Lot 6 Variance and 1999 amendment and, thus, does not find that the future use of those rights disturbs the Board's prior approvals; and

WHEREAS, the Lot 11 Owner states that there is not yet a decision regarding a future development of Lot 11 and is considering: (1) the continued use of the Lot 11 Building as a transient hotel pursuant to the existing variance; (2) conversion of a portion of the Lot 11 Building to residential use, which would require approval from the Board; and (3) a surrender of the variance on Lot 11 and the construction of a new building in accordance with the current zoning regulations, which might use excess development rights available on Lot 6; and

WHEREAS, the applicant states that regardless of the plan to proceed, the Lot 11 Building will continue to be used as a transient hotel pursuant to the variance for some period of time and that, due to the fact that it is currently overbuilt as to floor area, no transfer of unused development rights from Lot

6 will be possible without other changes to or demolition of the Lot 11 Building; and

WHEREAS, the Board notes that the Lot 6 Owner does not propose any alteration to the building or use at 40 Central Park South and, thus, Lot 6 will continue to operate in accordance with the Board-approved plans and the conditions of its grant; and

WHEREAS, as to Lot 11, the Lot 11 Owner acknowledges that notwithstanding the Board's consent to a zoning lot merger and floor area transfer from Lot 6, any changes to the Lot 11 Building require prior approval from the Board as either (1) acceptance of a surrender of the Lot 11 variance; (2) amendment to the Lot 11 variance; or (3) a new variance; and

WHEREAS, the Board notes that it does not take any position on the floor area calculations, which are subject to DOB review and approval, and that any changes to Lot 6 or Lot 11 are subject to the Board's review and approval; and

WHEREAS, the Board notes that even if the Lot 11 Owner ultimately demolishes the Lot 11 Building and surrenders the Lot 11 variance, as a single zoning lot, Lot 6 and Lot 11 remain under the Board's jurisdiction; and

WHEREAS, the Board notes that, by this amendment to BSA Cal Nos. 960-67-BZ and 116-68-BZ, it does not approve an amount of floor area available for transfer or allocated to each site; and

WHEREAS, at hearing, the Board asked the Lot 11 Owner to clarify its floor area calculations for Lot 6 and the Lot 11 Owner confirmed that there are 307,285 sq. ft. available to Lot 6, including an Inclusionary Housing bonus (205,860 sq. ft. on the R10H/C5-1 portion of the site without the bonus; 41,172 sq. ft. of bonus; and 60,253 sq. ft. on the C5-2.5 sq. ft. where the bonus is not available); and

WHEREAS, the Lot 11 Owner represents that after the 251,816 sq. ft. of floor area associated with the Lot 6 buildings is subtracted from 307,285 sq. ft., there are 55,469 sq. ft. of unused development rights; and

WHEREAS, the Board notes that the respective fee owners of Lot 6 and Lot 11 authorized the application; and

WHEREAS, based upon its review of the record, the Board does not object to the proposed increase in the size of the zoning lot and associated modification of the site plan; and

WHEREAS, additionally, the Board does not object to a transfer of unused development rights from Lot 6 to Lot 11, subsequent to the proposed zoning lot merger, but notes that any further changes to Lot 6 and Lot 11 that are inconsistent with prior approvals are subject to the Board's review and approval.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolutions, having been adopted on June 25, 1968 and November 13, 1968, so that as amended this portion of the resolutions shall read: "to permit the merger of Lot 6 and Lot 11, to permit the associated

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modifications to the BSA-approved site plan, and to consent to a future transfer of development rights from Lot 6 and Lot 11, *on condition* that all site conditions will comply with drawings marked 'Received April 1, 2014'– (1) sheet; and *on further condition*:

THAT the zoning calculations, including any transfer of development rights, are subject to DOB's review and approval and must be in full compliance with underlying bulk regulations;

THAT any modifications to the individual Lot 6 or Lot 11 or to the future merged zoning lot remain subject to the Board's jurisdiction;

THAT all conditions from the prior resolution not specifically waived by the Board will remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, April 8, 2014.

546-82-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pasquale Carpentire, owner; Ganesh Budhu, lessee.

SUBJECT – Application June 20, 2013 – Extension of term of previously granted variance for the continued operation of a non-conforming open public parking lot which expired on June 14, 2013. R7-A zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, bounded by 88th Avenue to its north, 150th Street to its east, 148th Street to its west, 89th Avenue to its south, Block 9693, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a parking lot (Use Group 8), which expired on June 14, 2013; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014 and then to decision on April 8, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan,

Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is on the north side of 89th Avenue, between 148th Street and 150th Street; and

WHEREAS, the site is located within an R7A zoning district within the Downtown Special Jamaica District, and is occupied by a parking lot; and

WHEREAS, on June 14, 1983, under the subject calendar number, the Board granted a variance to allow an enlargement of an existing legal non-conforming open parking lot for a term of ten years; and

WHEREAS, on May 9, 1985, the grant was extended another ten years from its 1993 expiration, to expire on June 14, 2003, and amended to limit the capacity to 68 parking spaces and ten reservoir spaces; and

WHEREAS, most recently, on September 9, 2008, the Board permitted an amendment to the grant to allow unattended parking of non-commercial vehicles at the site and extended the term of the grant for ten years, to expire on June 14, 2013; and

WHEREAS, the applicant now seeks an additional extension of the term; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to remove the barbed wire from the fence surrounding the site; and

WHEREAS, in response, the applicant submitted photographs depicting the removal of the barbed wire; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 14, 1983, so that as amended the resolution reads: "to grant an extension of the variance for a term of ten years from the expiration of the prior grant, to expire on June 14, 2023; *on condition* that all site conditions will comply with drawings marked 'Received January 9, 2014'– (1) sheet;; and *on further condition*:

THAT the term of the variance will expire on June 14, 2023;

THAT barbed wire will not be installed atop the fence at the site;

THAT the above conditions will be listed on the certificate of occupancy;

THAT an amended certificate of occupancy will be obtained by April 8, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(Alt. No. 1206/79)

Adopted by the Board of Standards and Appeals, April 8, 2014.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application October 16, 2013 – Amendment of a previously approved Special Permit (§73-36) for a physical culture establishment (*Bodhi Fitness Center*). The amendment seeks to enlarge the PCE space by 3,999 sq. ft. M1-1, C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previously-granted special permit for a physical culture establishment (“PCE”) to permit the enlargement of the PCE; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014 and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Prince Street between 35th Avenue and Northern Boulevard, partially within an M1-1 zoning district and partially within a C2-2 zoning district; and

WHEREAS, the site is occupied by a one-story commercial building; and

WHEREAS, the PCE is located on a portion of the first story of the building and occupies 8,962 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Bodhi Fitness; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 11, 2002 when, under the subject calendar number, the Board granted a special permit to legalize a physical culture establishment in the subject building for a term of ten years, to expire on June 1, 2008; and

WHEREAS, most recently, on August 25, 2009, the Board granted an extension of the term for ten years, to expire on June 1, 2018; and

WHEREAS, the applicant now seeks an amendment to permit the enlargement of the PCE into other portions of the first story of the building; specifically, the proposal would increase the floor area of the PCE from 8,962 sq. ft. to 12,961 sq. ft.; and

WHEREAS, in addition, the applicant seeks an amendment authorizing minor modifications to the layout of the changing rooms and an increase in the number of accessory parking spaces for the PCE within the cellar of the building from 16 to 17; and

WHEREAS, at hearing, the Board directed the applicant to: (1) confirm that the proposed accessory signage for the PCE complies with the zoning district regulations; and (2) submit a revised site plan that shows the entire zoning lot and the entrance to the parking facility; and

WHEREAS, in response, the applicant confirmed that the signage complies and submitted a revised site plan that shows the entire zoning lot, as well as the entrance to the parking facility; and

WHEREAS, based upon its review of the record, the Board finds the requested amendments to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution to permit the noted modifications; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 2, 2014’– (5) sheets; and *on further condition*:

THAT signage for the PCE will comply with the C2 regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

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(DOB Application No. 420908174)

Adopted by the Board of Standards and Appeals, April 8, 2014.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Flatland 3706 Real Estate, LLC, owner.

SUBJECT – Application February 7, 2014 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to construct a four-story multiple dwelling, which expires on October 17, 2014. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Bard and Tyler Avenues, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an R3-2 zoning district, within the Special Hillside Preservation District, the construction of a three-story Use Group 2 multiple dwelling for adults age 55 and over, which expires on October 17, 2014; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, and then to decision on April 8, 2014; and

WHEREAS, the subject site is located on the south side of Clove Road, between Broadway and Bement Avenue, within an R3-2 (HS) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since October 17, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story, 25-unit Use Group 2 multiple dwelling for adults age 55 and over; and

WHEREAS, substantial construction was to be completed by October 17, 2010, in accordance with ZR § 72-23; however, as of that date, only the foundation and the sanitary and storm sewer lines on Clove Road had been completed; accordingly, on October 26, 2010, the Board extended the time to complete construction for four years, to expire on October 17, 2014; and

WHEREAS, the applicant states that, subsequent to the 2010 extension of time to complete construction, work ceased

and the site went into foreclosure and a new developer took ownership of the site on July 10, 2013; and

WHEREAS, accordingly, the applicant now seeks additional time to obtain funding and complete construction; and

WHEREAS, at hearing, the Board directed the applicant to repair the construction fence around the site; the Board also questioned whether the requested three years would be sufficient to complete construction, given that the applicant has represented that funding has not yet been secured; and

WHEREAS, in response, the applicant submitted photos showing that the fence had been repaired; and

WHEREAS, as to whether a three-year extension of time would be sufficient, the applicant responded that it while is anticipated that three years will be sufficient, a four-year extension would be preferred; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 17, 2006, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years from April 8, 2014, to expire on April 8, 2018; *on condition*:

THAT substantial construction will be completed by April 8, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 500740665)

Adopted by the Board of Standards and Appeals, April 8, 2014.

823-19-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Minzer, owner.

SUBJECT – Application April 20, 2012 – Amendment (§§ 11-412 and 11-413) of a previously approved variance which permitted a one story warehouse (UG 16). The application seeks to construct an as-of-right two-story community facility (UG 4) atop the warehouse and reduce the warehouse space to accommodate 13 required accessory

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parking spaces for the proposed community facility use. R5 zoning district.

PREMISES AFFECTED – 1901 10th Avenue, southeast corner of East 19th Street and 10th Avenue, Block 890, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

457-56-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Medow-"The Shop" 148-152L.P., owner.

SUBJECT – Application November 19, 2013 –

Extension of Term of variance permitting accessory parking of motor vehicles, customer parking, and loading and unloading in conjunction with adjacent factory building. R6B zoning district.

Extension of Term of variance permitting accessory parking of motor vehicles, customer parking, and loading and unloading in conjunction with adjacent factory building. R6B zoning district.

PREMISES AFFECTED – 152-154 India Street, Southern side of India Street, 150 ft. east of intersection of India Street and Manhattan Avenue. Block 2541, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

142-92-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application March 20, 2014 –

Amendment of a previously approved special permit (§73-48) for a community facility (*New York Methodist Hospital*).

The application seeks to amend the approved plans to accommodate required accessory parking in a new ambulatory care facility. R6, C1-3/R6B & R7B zoning districts.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block 1084, Lot 36, 164, 1001/1002, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

192-96-BZ

APPLICANT – Sheldon Lobel, PC, for 1832 Realty LLC, owner.

SUBJECT – Application January 7, 2014 – Amendment of a previously approved variance (§72-21) which permitted a large retail store (UG 10) contrary to use regulations. The application seeks to eliminate the term, which expires on September 23, 2022. C1-2/R5 zoning district.

PREMISES AFFECTED – 1832 86th Street, aka 1854 86th Street; 1-29 Bay Street, 2-6 Bay 20th Street, located on the southwest side of 86th Street spanning the entire block frontage between Bay 19th St and Bay 20th Street. Block 6370, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq. of Kramer Levin Naftalis & Frankel LLP, for Central Synagogue, owner.

SUBJECT – Application February 26, 2014 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (*Central Synagogue*), which expires on February 23, 2014. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, North side of East 55th Street, between park and Lexington Avenue, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

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Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1
ACTION OF THE BOARD – Laid over to April 29,
2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31st Street
Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB
determination that the subject advertising sign is not entitled
to non-conforming use status. C6-4/HY zoning district.

PREMISES AFFECTED – 450 West 31st Street, West 31st
Street, between Tenth Avenue and Lincoln Tunnel
Expressway, Block 728, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal of two final
determinations, issued by the Manhattan Borough
Commissioner of the Department of Buildings (“DOB”) on
April 17, 2013 and on May 1, 2013, acting on DOB
Application Nos. 102663949 and 102663930, respectively
(the “Final Determinations”), which state, in pertinent part
that:

As of this date, the Department has not received sufficient
information to demonstrate that the approval and permit
should not be revoked. Therefore, pursuant to Sections 28-
104.2.10 and 28-105.10 of the Administrative Code of the
City of New York, the approval and permit are hereby
revoked; and

WHEREAS, a public hearing was held on this appeal on
November 19, 2013, after due notice by publication in *The
City Record*, with continued hearings on December 17, 2013,
January 28, 2014, and February 11, 2014, and then to decision
on April 8, 2014; and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Chair Srinivasan,
Vice-Chair Collins, Commissioner Hinkson, Commissioner
Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the
southwest corner of the intersection of Dyer Avenue and
West 31st Street, within a C6-4 zoning district within the
Special Hudson Yards District; and

WHEREAS, the site is occupied by a 12-story
commercial building; a 1,200 sq. ft. illuminated advertising
sign (the “Sign”) is located on the east wall of the 12-story
building; and

WHEREAS, this appeal is brought on behalf of OTR
Media Group, Inc., the lessee of the Sign (the “Appellant” or
“OTR”); and

WHEREAS, DOB appeared and made submissions in
opposition to this appeal; and

WHEREAS, the Board notes that by letter dated April
7, 2014, the Appellant requested withdrawal of the appeal,
and by letter dated April 8, 2014, DOB requested that the
Board deny the Appellant’s request, citing concerns about
public policy and its ability to take enforcement actions
against the Sign and other similarly-situated signs; and

WHEREAS, per § 1-12.2 of the Rules of Practice and
Procedure, the Board may consider a request to withdraw an
appeal at any time before the Board’s final determination;
however, the Board may reject the withdrawal request if it
determines that proper enforcement or public policy would
be served by rendering a decision; and

WHEREAS, the Board agrees with DOB that the
appeal has broad public policy and enforcement
implications; accordingly, the Appellant’s request to
withdraw the appeal is denied; and

PROCEDURAL HISTORY

WHEREAS, on December 22, 1999, DOB issued a
permit under Job. No. 102663930; this permit authorized the
installation of the structural components of the Sign (the “Sign
Structure Permit”); one day later, on December 23, 1999,
DOB issued a permit under Job. No. 102663930; this permit
authorized the installation of the Sign itself (“the Sign
Permit”); at the time, the site and the permit applications were
subject to the sign regulations applicable in an M1-6 zoning
district; and

WHEREAS, on January 19, 2005, the site was rezoned
from an M1-6 zoning district to a C6-4 zoning district within
the Special Hudson Yards District; and

WHEREAS, in early 2013, DOB audited the
applications documents for the Sign Permit and the Sign
Structure Permit; with regard to the Sign Permit, DOB raised
the following objection:

Provide additional information to clarify whether the sign is
not within 200’-0” of an arterial highway or public park as per
ZR 42-55; and

WHEREAS, with regard to the Sign Structure Permit,
DOB raised the following objections:

Sign audit application no. 102663949 in conjunction to this
application shall be resolved before sign structure application
(audit) is lifted;

For sign structures, verify compliance with TPPN No. 5/00;
and

WHEREAS, based on these objections, on or about

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January 11, 2013, DOB notified the Appellant of its intent to revoke the Sign Structure Permit, and on or about February 14, 2013, DOB notified the Appellant of its intent to revoke the Sign Permit; and

WHEREAS, by letter dated April 17, 2013, the Sign Permit was revoked, and by letter dated May 1, 2013, the Sign Structure Permit was revoked; and

WHEREAS, the instant appeal followed; and

WHEREAS, initially, the contested issue on appeal was whether the Sign was “within view” of an approach to the Lincoln Tunnel; DOB initially advanced the argument that the Sign was “within view” of an approach per the Board’s interpretation of “within view” in BSA Cal. No. 134-13-A (538 Tenth Avenue, Manhattan) (adopting the “360 Degrees Standard” for determining whether a sign is “within view”); and

WHEREAS, the Appellant countered that because a motorist would have to tilt her head in order to view the Sign, the Sign should not be considered “within view”; however, even if the Sign is considered “within view” of a restricted roadway, the Appellant asserts that the roadway in question—the length of Dyer Avenue between the site (at West 31st Street) and the Lincoln Tunnel (hereafter “Lincoln Tunnel Expressway/Dyer Avenue”)—is neither a designated arterial highway itself, nor an “approach” to a designated arterial highway, per 1 RCNY § 49-01 (“Rule 49”), because northbound traffic along the roadway has an opportunity to enter the street network well north of the site at West 39th Street; and

WHEREAS, DOB agrees with the Appellant that Lincoln Tunnel Expressway/Dyer Avenue does not satisfy the definition of “approach” set forth in Rule 491; however, DOB asserts that the roadway itself is a designated arterial highway shown on the Master Plan of Arterial Highways and Major Streets (“Master Plan”) as part of the Lincoln Tunnel toll crossing and designated by the City Planning Commission (“CPC”) in its January 15, 1958 resolution (the “1958 CPC Resolution”); as such, DOB states that the Sign, which is within view of and a few linear feet from Lincoln Tunnel Expressway/Dyer Avenue, is prohibited by ZR § 42-552; and

WHEREAS, as set forth below, the Appellant disagrees that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway; therefore, the issue on appeal is whether that roadway is a designated arterial highway or an approach to a designated arterial highway under the Zoning Resolution; and

1 The Board agrees with the parties that Lincoln Tunnel Expressway/Dyer Avenue does not satisfy the definition of “approach” set forth in Rule 49.

2 Because the parties agree that the Sign is “within view” of certain portions of the full length of Lincoln Tunnel Expressway/Dyer Avenue, there is no further discussion of the 360 Degrees Standard in this appeal.

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 Definitions

Non-conforming, or non-conformity

A “non-conforming” #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto; and

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed

For the purposes of this Section, arterial highways shall include all highways that are shown on the Master Plan of Arterial Highways and Major Streets as “principal routes,” “parkways” or “toll crossings,” and that have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply.

ZR Appendix H

Designation of Arterial Highways

Pursuant to the provisions of Section 32-66 and 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) of the Zoning Resolution of the City of New York, the City Planning Commission has designated as arterial highway to which the provisions of Sections 32-66 and 42-55 apply, the following arterial highways which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets. . . .

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TOLL CROSSINGS . . . Lincoln Tunnel and Approaches;

* * *

1 RCNY 49-01 Definitions

Approach. The term “approach” as found within the description of arterial highways indicated within Appendix C3 of the Zoning Resolution, shall mean that portion of a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that the Sign and Sign Structure Permits were improperly revoked by DOB because the Sign is not subject to the arterial highway restrictions on advertising signs; and

WHEREAS, specifically, the Appellant states that although the Sign is within view of Lincoln Tunnel Expressway/Dyer Avenue, that roadway is neither a designated arterial highway, nor an approach to a designated arterial highway; and

Arterial Highway

WHEREAS, the Appellant asserts that Lincoln Tunnel Expressway/Dyer Avenue is not an arterial highway for the following reasons: (1) the roadway is not listed by name in Appendix H; (2) the Master Plan is too vague to effect a designation of a particular roadway; (3) the 1958 CPC Resolution did not expressly designate the roadway as a toll crossing; and (4) the Master Plan and the CPC Resolution are, at best, ambiguous as to whether they designated the roadway as part of the Lincoln Tunnel toll crossing; and

WHEREAS, the Appellant states that although Lincoln Tunnel Expressway/Dyer Avenue appears as a series of dots on the Master Plan as a toll crossing, the roadway is not designated by name as an arterial highway in Appendix H of the Zoning Resolution; rather, the Appellant contends that Appendix H of the Zoning Resolution (“Appendix H”) lists only “Lincoln Tunnel and Approaches” under the toll crossings section; and

WHEREAS, the Appellant states that DOB’s basis for determining that the Lincoln Tunnel Expressway/Dyer Avenue appears on the Master Plan cannot be correct because even though the dots approximate where Lincoln Tunnel Expressway/Dyer Avenue is located, the Master Plan is too vague to give fair notice of the requirement; and

WHEREAS, likewise, the Appellant asserts that the 1958 CPC Resolution—which DOB contends amended the

Master Plan to make Lincoln Tunnel Expressway/Dyer Avenue a toll crossing subject to the arterial highway provisions—failed to expressly designate Lincoln Tunnel Expressway/Dyer Avenue and only did so by implication when it depicted the roadway on the Master Plan as a toll crossing; and

WHEREAS, the Appellant contends that the dots were not placed on the Master Plan to denote an official extension of the Lincoln Tunnel toll crossing but rather as a reference showing the connection to the Mid-Manhattan Expressway, which was relocated pursuant to the 1958 CPC Resolution; and

WHEREAS, in support of this assertion, the Appellant provided copies of CPC resolutions from the 1940s, 1950s, and 1960s that expressly state the name of the roadway to be designated as an arterial highway; the Appellant states that the 1958 CPC Resolution, in contrast, explicitly detailed the modifications to the Mid-Manhattan Expressway, but contained no clear language designating Lincoln Tunnel Expressway/Dyer Avenue as an arterial highway; and

WHEREAS, further, the Appellant asserts that the 1958 CPC Resolution suffers from internal inconsistencies and ambiguities that make it impossible to determine whether it modified the Master Plan with respect to Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, the Appellant also asserts that modifications to the City Map—which DOB notes correspond to the descriptions of Lincoln Tunnel Expressway/Dyer Avenue—are not relevant to the question of whether the roadway was designated under the 1958 CPC Resolution, because, as a matter of law, a City Map change does not fix the terms of a CPC resolution; and

WHEREAS, the Appellant contends that because both the 1958 CPC Resolution and the Master Plan are ambiguous as to whether Lincoln Tunnel Expressway/Dyer Avenue is a toll crossing and an arterial highway, the ambiguity must be resolved in favor of the property owner in accordance with Allen v. Adami, 39 NY2d 275, 277 (1976); 440 East 102nd Street Corp. v. Murdock, 285 NY 298, 304 (1941); and Exxon Corp. v. New York City Board of Standards and Appeals, 128 AD2d 289, 295-296 (1st Dep’t 1987), app. denied 70 NY2d 614 (1988); and

WHEREAS, finally, the Appellant states that by looking to the 1958 CPC Resolution and the Master Plan—which, again, the Appellant considers too vague to rely on—to determine whether the Sign is subject to the arterial highway restrictions, DOB is ignoring its prior interpretation, as embodied in Rule 49, contrary to Allen v. Blum, 85 AD2d 228, 236 (1st Dep’t 1982); and Chambers v. Coughlin, 76 Ad2d 980, 981 (3rd Dep’t 1980); and

WHEREAS, additionally, the Appellant asserts that, pursuant to Parkview Associates v. City of New York, 71 NY2d 274, 281 (1988), the specifics of a CPC resolution

3 Previously, Appendix H was known as Appendix C; Rule 49 has not been amended to reflect the update. The change from C to H was purely administrative and had no substantive effect on the designation of any arterial highway.

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control the images on the map; as such, the vague dots on the Master Plan are clarified by the absence of explicit language designating Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing in the 1958 CPC Resolution; and

WHEREAS, accordingly, the Appellant contends that Lincoln Tunnel Expressway/Dyer Avenue is not a designated arterial highway; and

Approach

WHEREAS, the Appellant asserts that, as roadway connecting to the Lincoln Tunnel, Lincoln Tunnel Expressway/Dyer Avenue is subject to the Rule 49 definition of “approach,” and according to such definition, the roadway is not an approach; and

WHEREAS, the Appellant states that in promulgating a definition for “approach” in Rule 49, DOB has already determined whether Lincoln Tunnel Expressway/Dyer Avenue is subject to the arterial highway restrictions; and

WHEREAS, the Appellant states, in essence, that if it is not apparent from the applicable CPC resolution and Master Plan whether a roadway is designated as an arterial highway, DOB must apply Rule 49’s definition of approach; and

WHEREAS, the Appellant asserts that, by definition, Lincoln Tunnel Expressway/Dyer Avenue is not an approach (and therefore not subject to the arterial highway restrictions) because northbound traffic along the roadway has an opportunity to enter the street network well north of the site at West 39th Street; and

WHEREAS, thus, the Appellant contends that the arterial highway sign restrictions are inapplicable to the Sign; and

WHEREAS, accordingly, the Appellant states that DOB’s revocation of the Sign Permit and the Sign Structure Permit must be reversed; and

DOB’S POSITION

WHEREAS, DOB asserts that the Sign is within view of Lincoln Tunnel Expressway/Dyer Avenue, which is a designated arterial highway; thus, the Sign and Sign Structure Permits were issued in 1999 contrary to ZR § 42-534 and were properly revoked; and

Arterial Highway

WHEREAS, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway because it is: (1) shown on the Master Plan; and (2) designated as a toll crossing by CPC in the 1958 CPC Resolution; and

WHEREAS, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan, in that it is depicted as a series of dots descending from the Lincoln

Tunnel, which, according to the Master Plan’s legend, indicate that the roadway is part of the Lincoln Tunnel toll crossing; and

WHEREAS, DOB disagrees with the Appellant that the dots are too vague to be understood as designating the roadways that comprise Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; DOB states that there is sufficient information on the face of the Master Plan and in the relevant CPC resolutions adopting modifications to the Master Plan to demonstrate that the roadway is an arterial highway; and

WHEREAS, DOB notes that the Master Plan was a requirement of former New York City Charter § 197, which also required modification of the Master Plan from time to time to show desirable streets, roads, highways, and other features to provide for future growth, development, and adequate facilities in the city; and

WHEREAS, DOB states that the Master Plan shows integral parts of the highway system and is intended to be a macroscopic, schematic framework for development and purposefully does not show precise lines for all routes; nevertheless, DOB asserts that one can identify the location of Lincoln Tunnel Expressway/Dyer Avenue and determine that it is in fact a toll crossing by examining the 1958 CPC Resolution; and

WHEREAS, specifically, DOB states that the 1958 CPC Resolution makes reference to “[n]ew approaches for the Lincoln Tunnel, which have been recently built, [that] extend southerly to 30th Street and this street has been widened between Ninth and Tenth Avenues” and that such reference reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, DOB asserts that the widened street at West 30th Street between Ninth and Tenth Avenues referenced by CPC can only be Lincoln Tunnel Expressway/Dyer Avenue since no other street matches this description; and

WHEREAS, accordingly, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan; and

WHEREAS, likewise, DOB asserts that the language of the 1958 CPC Resolution—in addition to facilitating an understanding of the Master Plan—reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, DOB states that, contrary to the Appellant’s assertions, there is no need for the 1958 CPC Resolution to have verbalized the designation of Lincoln Tunnel Expressway/Dyer Avenue or list the roadway by name as had been done in other CPC designations of arterial highways; and

WHEREAS, DOB contends that an express statement was not required because the Master Plan itself was modified to extend the reach of the toll crossing; the extension of the

4 ZR § 42-53 was modified and renumbered as ZR § 42-55 as a result of the February 27, 2001 text amendment. The modification was purely administrative and had no substantive effect on the issues presented in this appeal.

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dots on the Master Plan spoke for itself; and

WHEREAS, DOB also notes that the City Map depicts a widened street at West 30th Street between Ninth and Tenth Avenues, which matches precisely the location of the lengthened toll crossing according to the 1958 CPC Resolution; and

WHEREAS, additionally, DOB asserts that a CPC report need not explicitly declare that a roadway is an arterial highway; ZR § 42-55 and Appendix H, rather than the CPC report, are the operative statutory provisions that impose control over signs proximate to toll crossings on the Master Plan; and

WHEREAS, accordingly, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is both designated as part of the Lincoln Tunnel toll crossing (which is an arterial highway according to Appendix H of the Zoning Resolution) and shown on the Master Plan; and

Approach

WHEREAS, DOB disagrees with the Appellant that Appendix H's listing of Lincoln Tunnel and Approaches implicates Rule 49's definition of "approaches" with respect to Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, DOB contends that because Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan as a toll crossing, the roadway necessarily is not an approach but is, rather, part of the toll crossing; thus, Appendix H's listing of the toll crossing "Lincoln Tunnel" reflects a designation of both the Lincoln Tunnel and Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, thus, DOB asserts that the Rule 49 definition of "approach" has no bearing on whether Lincoln Tunnel Expressway/Dyer Avenue has been designated as an arterial highway; and

WHEREAS, DOB states that the Rule 49 definition of approach is employed only where the Master Plan's schematic framework is too large in scale to ascertain whether a roadway is an approach, as that term is used in Appendix H; thus, the definition is inapplicable to this case because Lincoln Tunnel Expressway/Dyer Avenue is actually depicted as a toll crossing on the Master Plan; and

WHEREAS, accordingly, DOB states that the Sign and Sign Structure Permits were issued in violation of the arterial highway restrictions of ZR § 42-53; as such, the Final Determinations revoking such permits should be upheld; and

CONCLUSION

WHEREAS, the Board finds that: (1) Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway, in that it is shown as part of the Lincoln Tunnel toll crossing on the Master Plan and was designated as such by the 1958 CPC Resolution; and (2) Lincoln Tunnel Expressway/Dyer Avenue is not subject to the Rule 49 definition of "approaches"; and Arterial Highway

WHEREAS, the Board finds that Lincoln Tunnel

Expressway/Dyer Avenue is a designated arterial highway, in that it is shown as part of the Lincoln Tunnel toll crossing on the Master Plan and was designated as such by the 1958 CPC Resolution; and

WHEREAS, the Board finds that the Master Plan shows a series of dots that approximate the location of Lincoln Tunnel Expressway/Dyer Avenue; according to the legend for the map, the dots indicate that the toll crossing for the Lincoln Tunnel begins at the tunnel and descends southward between Ninth and Tenth Avenues to West 30th Street; and

WHEREAS, the Board finds that the change in the Master Plan accompanied the adoption of the 1958 CPC Resolution and that such resolution provides a basis for finding that the area shown on the Master Plan was intended to be made part of the toll crossing; and

WHEREAS, the Board agrees with DOB that the 1958 CPC Resolution makes reference to "[n]ew approaches for the Lincoln Tunnel, which have been recently built, [that] extend southerly to 30th Street and this street has been widened between Ninth and Tenth Avenues" and that such reference reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, the Board also agrees with DOB that the widened street at West 30th Street between Ninth and Tenth Avenues referenced by CPC can only be Lincoln Tunnel Expressway/Dyer Avenue since no other street matches this description; and

WHEREAS, the Board also finds that, contrary to the Appellant's assertions, there is no need for the 1958 CPC Resolution to have verbalized the designation of Lincoln Tunnel Expressway/Dyer Avenue or list the roadway by name as had been done in other CPC designations of arterial highways; and

WHEREAS, rather, the Board finds that a CPC report need not explicitly declare that a roadway is an arterial highway, and that ZR § 42-55 and Appendix H are the operative statutory provisions; and

WHEREAS, as to the Appellant's assertion that the dots were not placed on the Master Plan to denote an official extension of the Lincoln Tunnel toll crossing but rather as a reference showing the connection to the Mid-Manhattan Expressway, which was relocated pursuant to the 1958 CPC Resolution, the Board disagrees; that the Master Plan was amended at all carries significant weight particularly *because* it is macroscopic and schematic in nature; thus, any change to the Master Plan must be presumed to have been made deliberately; and

WHEREAS, turning to the Appellant's cited case law, the Board disagrees that there is an "ambiguity" that must be resolved in favor of the property owner pursuant to Allen v. Adami, 39 NY2d 275 (1976); and

WHEREAS, rather, as noted above, the Board finds that even a cursory review of the symbols and legend of the Master

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Plan plainly indicates that the Lincoln Tunnel toll crossing extends southward from the tunnel; likewise, mere reference to Appendix H reveals that the Lincoln Tunnel is a “toll crossing” subject to the arterial highway restrictions set forth in ZR § 42-55; thus, to the extent that the precise location of the toll crossing cannot be determined by reference to the Master Plan or Appendix H, it is proper to consult the CPC resolution that created the designation in order to determine where the toll crossing—which is shown on the Master Plan and referenced in Appendix H—begins and ends; and

WHEREAS, thus, the Board observes that while the scope of the 1958 designation may not be readily apparent based solely on the Master Plan, the precise nature of the designation may be ascertained by reference to the 1958 CPC Resolution; thus, the designation—and, consequently, the applicability of the arterial highway restrictions, per ZR § 42-55—is, contrary to the Appellant’s assertions, clear and unambiguous; and

WHEREAS, likewise, the Board finds that there is no discrepancy between the Master Plan and the Zoning Resolution that implicates Parkview Associates v. City of New York, 71 NY2d 274 (1988); in that case, the Court of Appeals held that “discrepancies between the zoning map and enabling resolution are controlled by the specifics of the resolution”; insofar as the Parkview holding applies to a discrepancy between the Zoning Resolution and the Master Plan, here, there is no discrepancy – the Master Plan (and the 1958 CPC Resolution which amended it) merely clarify the requirements of ZR § 42-55 and Appendix H; and

WHEREAS, accordingly, the Board finds that Lincoln Tunnel Expressway/Dyer Avenue is designated as part of the Lincoln Tunnel toll crossing; and Approach;

WHEREAS, the Board agrees with DOB that the Rule 49 definition of “approaches” is not implicated in this appeal; and

WHEREAS, the Board finds that because Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan as a toll crossing, the roadway necessarily is not an approach but is, rather, part of the toll crossing; thus, Appendix H’s listing of the toll crossing “Lincoln Tunnel” reflects a designation of both the Lincoln Tunnel and Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, the Board also finds that, irrespective of the nomenclature employed, there was a clear intent in the 1958 CPC Resolution and in the amendment to the Master Plan to designate newly built roadways as part of the Lincoln Tunnel toll crossing arterial highway; where the CPC Resolution makes reference to the “approaches” it does so to distinguish the newly designated portions of the toll crossing from the actual tunnel; thus, the “approaches” portion of “Lincoln Tunnel and Approaches” is a historical use of the term—and one that is not subject to Rule 49’s definition of “approaches,” which came into effect decades later; and

WHEREAS, likewise, the Board observes that the Appellant’s interpretation of Rule 49 would impose *less* restrictive requirements than the statute being implemented by the rule; in effect, this would result in a legislative act being overruled by executive rule-making; accordingly, the Board declines to adopt the Appellant’s interpretation of Rule 49 in this case because doing so would permit that which the 1958 CPC Resolution intended to prohibit – advertising signs along the Lincoln Tunnel toll crossing; and

WHEREAS, thus, contrary to the Appellant’s assertions, DOB did not decide this case when it promulgated Rule 49; rather, CPC decided it when it made Lincoln Tunnel Expressway/Dyer Avenue part of the Lincoln Tunnel toll crossing; and

WHEREAS, accordingly, the Board finds that the Sign is within view of an arterial highway and that DOB properly revoked the Sign Permit and the Sign Structure Permit; and

Therefore it is Resolved, that this appeal, challenging the Final Determinations issued on April 17, 2013 and on May 1, 2013, is denied.

Adopted by the Board of Standards and Appeals, April 8, 2014.

307-13-A & 308-13-A

APPLICANT – Joseph M. Morace, R.A., for Jake Rock, LLC, owner.

SUBJECT – Application November 21, 2013 – Proposed construction of two detached, two-family residences not fronting on a mapped street, contrary to Section 36 of the General City Law. R3A zoning district.

PREMISES AFFECTED – 96 & 100 Bell Street, Block 2989, Lot 24 & 26, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 24, 2013, acting on Department of Buildings Application Nos. 520149777 and 520149786, reads in pertinent part:

The street giving access to the proposed building is not duly placed on the official map of the City of New York; therefore,

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of the building

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fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, this is an application to allow the construction of one two-family home and one single-family home not fronting a legally mapped street contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of Bell Street beginning at a point approximately 72 feet south of Reynolds Street within an R3A zoning district; and

WHEREAS, the applicant states that the site has 5,844 sq. ft. of lot area and has been subdivided into two zoning lots (Tentative Tax Lots 24 and 26); and

WHEREAS, the applicant proposes to construct a two-story, two-family home with approximately 1,995 sq. ft. of floor area (0.59 FAR) and three accessory parking spaces on Tentative Lot 24, and a two-story, single-family home with approximately 1,440 sq. ft. of floor area (0.59 FAR) and two accessory parking spaces on Tentative Lot 26; and

WHEREAS, the applicant notes that Bell Street is paved and traveled, intersecting Reynolds Street to the north of the property, and that utilities, mail delivery and Sanitation Department services are provided for residents along the street; and

WHEREAS, the applicant states that a proposed eight-inch water main and fire hydrant are to be installed in Bell Street, in accordance with the Fire Department’s approval; in addition, onsite drywells are proposed for storm water runoff, and a connection will be made to an existing eight-inch sanitary sewer for sewage disposal; the sanitary sewer is maintained pursuant to a homeowners’ association agreement; and

WHEREAS, by letter dated January 29, 2014, the Fire Department states that it has reviewed the project and offers no objections provided the applicant complies with the following requirements: (1) the applicant submits to the Fire Department a variance request for construction on a substandard street; (2) all proposed homes are to be fully sprinklered; (3) that no parking anytime be permitted in front of the proposed homes with signs posted in accordance with Fire Code regulations; and (4) that any parking violations will be considered a violation of the Fire Commissioner’s Order and enforceable against the owner(s) of the property; and

WHEREAS, the applicant states that it submitted a variance application and revised plans to the Fire Department by letter dated February 20, 2014; and

WHEREAS, the applicant represents that, consistent with the Fire Department’s requirements, the width of the paved road is to be increased to 25 feet, a water main and fire hydrant are to be installed, both homes will be fully-sprinklered, and “No Parking” signs will be posted in front of both homes; and

WHEREAS, by letter dated March 24, 2014 the Fire Department states that it has reviewed and approved the revised site plan, subject to the following conditions: (1) both homes are fully-sprinklered, (2) “No Parking” are posted along the dead-end portion of Bell Street, in accordance with NYC Fire Code 503.7; and (3) hydrants are installed, as indicated on site plan, and in compliance with Department of Environmental Protection standards; and

WHEREAS, at hearing, the Board directed the applicant to provide a new sidewalk along Bell Street and to confirm that the proposed street trees are in accordance with the R3A district regulations; and

WHEREAS, in response, the applicant submitted an amended site plan showing a sidewalk with a width of three feet along Bell Street in front of the proposed homes; and

WHEREAS, as to the street trees, the applicant submitted approval letters from the Parks and Recreation Department; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions; and

Therefore it is Resolved, that the decision of the Staten Island Borough Commissioner, dated October 24, 2014, acting on Department of Buildings Application Nos. 520149777 and 520149786, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 5, 2014”-(1) sheet; that the proposal shall 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 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 Builder’s Pavement Plan for the site will be as reviewed and approved by DOB;

THAT the site and roadway will conform to the BSA-approved plans;

THAT both homes will be fully-sprinklered;

THAT signs stating “No Parking” will be posted along the dead end portion of Bell Street;

THAT a Homeowners’ Association will be created to maintain the street; and

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

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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 April 8, 2014.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of Buildings’ to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for deferred decision.

33-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Quentin Road Development LLC, owner.

SUBJECT – Application February 13, 2014 – Appeal challenging the Department of Building’s determination regarded permitted community facility FAR, per §113-11 (Special Bulk Regulations for Community Facilities) C4-2 zoning district, C8-2 (OP). C4-2 (OP) zoning district.

PREMISES AFFECTED – 902 Quentin Road, Southeast corner of intersection of Quentin Road and East 9th Street. Block 6666, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

ZONING CALENDAR

62-12-BZ

CEQR #12-BSA-094X

APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of commercial building, contrary to use regulations (§22-00). R7-1 zoning district. PREMISES AFFECTED – 614/618 Morris Avenue, northeastern corner of Morris Avenue and E 151th Street, Block 2411, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated November 30, 2011, acting on DOB Application No. 220142441, reads, in pertinent part:

Proposed commercial use (retail Use Group 6) in an R7-1 zoning district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the construction of a one-story mixed commercial and community facility building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with a continued hearing on March 25, 2013, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Bronx, recommends approval of the application, on condition that certain uses not be permitted within the building, including shelters, SROs, halfway houses, special needs or mental health facilities, domestic violence facilities, drug or alcohol rehabilitation centers, clubs, bars, cabarets, hotels or motels; and

WHEREAS, Bronx Borough President Ruben Diaz, Jr. and City Councilperson Maria del Carmen Arroyo provided testimony in support of the application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Morris Avenue and East 151st Street, within an R7-1 zoning district; and

WHEREAS, the site has 58.79 feet of frontage along Morris Avenue, 70.25 feet of frontage along East 151st Street,

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and 4,130 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is vacant; and

WHEREAS, the applicant proposes to construct a two-story mixed commercial and community facility building with 8,260 sq. ft. of floor area (2.0 FAR); the first story would have 4,130 sq. ft. of floor area and be occupied by retail stores (Use Group 6); the second story would also have 4,130 sq. ft. of floor area and it would be occupied by a use within Use Group 4; and

WHEREAS, because Use Group 6 is not permitted within the subject R7-1 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: its small lot size, shallow lot depth, and vacancy; and

WHEREAS, the applicant states that the site's small lot size (4,130 sq. ft. of lot area) and shallow lot depth (approximately 70 feet) make it unsuitable for conforming uses; and

WHEREAS, specifically, the applicant states it is financially infeasible to develop a site this small in this neighborhood for residential use without some commercial use, because residential uses of this scale require commercial use to offset the comparatively low residential rent, and

WHEREAS, in support of this statement, the applicant states that along Morris Avenue, small sites (with lot depths similar to the site and average lot areas of 2,000 sq. ft.) are occupied by approximately 100-year-old two- and three-story mixed residential and commercial buildings with commercial use at the ground floor; indeed, the applicant notes that the entire west side of Morris Avenue between East 149th Street and East 153rd Street is occupied by mixed residential and commercial buildings with ground floor retail use; and

WHEREAS, in addition, the applicant notes that residential developments without a commercial component in the neighborhood are much larger in scale than the site and can qualify for government assistance programs; and

WHEREAS, specifically, the applicant represents that nearby sites without a commercial component are significantly larger than the site, with average lot areas of 150,000 sq. ft.; such sites are developed as high-rise subsidized/low-income/affordable housing by the New York City Housing Authority, the New York State Division of Housing and Community Renewal, and the New York City Housing Development Corporation, which is not available to a site as small as the subject site; and

WHEREAS, the applicant also notes that the large sites were developed between 1961 and 1985; thus, new housing has not been developed in the vicinity for nearly 30 years; and

WHEREAS, the applicant states that the site's vacancy

makes it unique within the surrounding community, and submitted an area study, which reflects that there are only two other vacant sites within 400 feet of the site, both of which are owned by the New York City Department of Housing Preservation and Development and used in conjunction with the nearby Governor Smith Playground; and

WHEREAS, the Board finds that the cited conditions create an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of a four-story multiple dwelling with 14,207 sq. ft. of floor area (3.44 FAR) and 14 dwelling units; and

WHEREAS, the applicant concluded that the as-of-right scenario resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it economically viable; and

WHEREAS, at hearing, the Board requested additional information regarding the types of housing that surround the site; and

WHEREAS, in response, the applicant provided charts detailing the two types of housing in the area: low-rise multiple dwellings with ground floor commercial; and higher-density (between six- and 25-stories) subsidized housing; and

WHEREAS, based on the information provided in these charts and on the applicant's economic analysis, the Board agrees that because of the site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of low- to medium-density residential, commercial and community facility uses; the subject block is predominantly occupied by a school, an athletic field, and, as noted above, the Governor Smith Playground; the playground is directly south of the site, four- and three-story mixed residential and commercial buildings are located, respectively, directly north and south (across East 151st Street) of the site, and across Morris Avenue is a six-story multiple dwelling; and

WHEREAS, the applicant notes that the section of

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Morris Avenue where the site is located is a two-way, heavily-trafficked thoroughfare, with street parking on both sides, and retail uses at the ground floor for the full length of the subject block and the block directly south of East 151st Street; and

WHEREAS, accordingly, the proposed commercial use at the ground floor will be compatible with the surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant represents that the following are the bulk parameters of the proposal: two stories; 8,260 sq. ft. of floor area (2.0 FAR); 100 percent lot coverage; and a maximum building height of 37'-6"; and

WHEREAS, the applicant notes that the proposed FAR of 2.0 is less than half of the maximum FAR permitted for a community facility building in the subject R7-1 district (4.8 FAR) and that the proposed building height is well-below the maximum permitted (60'-0"); and

WHEREAS, as for the lot coverage, the applicant notes that although it is non-complying—the maximum lot coverage for a community facility building is 70 percent with the first story being a permitted obstruction within lot coverage up to 23 feet for certain community facilities—the site's location on a corner mitigates the impact of such lot coverage; additionally, due to the site's shallow depth, full lot coverage is necessary in order to provide a building with marketable floorplates; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the proposal is consistent with the neighborhood in terms of use and bulk and will not negatively impact nearby conforming uses; and

WHEREAS, the Board also notes that Community Board 1 approved the application on condition that certain uses not be permitted at the site; and

WHEREAS, the Board observes that many of the uses opposed by Community Board 1 are community facility uses permitted as-of-right in the subject R7-1 zoning district; as such, the Board declines to impose a restriction that would prohibit uses that are permitted as-of-right; and

WHEREAS, as for the commercial uses that Community Board 1 identified as objectionable (clubs, bars, cabarets, hotels and motels), the Board agrees that they are not appropriate within this building and will not be permitted under this grant, and the Board notes that hotels and motels are neither physically possible, nor financially feasible within the proposed building; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's

unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12-BSA-094X, dated March 5, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R7-1 zoning district, the construction of a one-story mixed commercial and community facility building, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received April 2, 2014"—(7) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of two stories; a maximum of 8,260 sq. ft. of floor area (2.0 FAR) (4,130 sq. ft. of commercial floor area and 4,130 sq. ft. of community facility floor area); 100 percent lot coverage; and a maximum building height of 37'-6";

THAT signage will comply with C1 regulations;

THAT the following uses will not be permitted at the site: clubs, bars, cabarets, hotels or motels;

THAT the above conditions will appear on the certificate of occupancy;

THAT substantial construction will be completed in accordance with ZR § 72-23;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

77-12-BZ

CEQR #12-BSA-108K

APPLICANT – Moshe M. Friedman, P.E., for Goldy Jacobowitz, owner.

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 91 Franklin Ave, 82’-3” south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 13, 2012, acting on Department of Buildings Application No. 320384026, reads in pertinent part:

Proposed five-story residential building in an M1-1 zoning district is contrary to 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014, February 25, 2014, and March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Brooklyn,

recommends approval of this application; and

WHEREAS, Councilmember Steven Levin and former Councilmember Letitia James provided testimony in support of this application; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 50 feet of frontage along Franklin Avenue, a depth of 100 feet, and approximately 5,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by two buildings: a vacant, three-story frame residential building, which, according to the Sanborn map, existed as of 1887; and an accessory garage; and

WHEREAS, the applicant notes that residential use became non-conforming at the site as of December 15, 1961, when the M1-1 designation took effect; and

WHEREAS, the applicant states that the building is structurally unsound and was vacated in 2009; consequently, residential use has been discontinued at the site for more than two consecutive years and, per ZR § 52-61, cannot be resumed; and

WHEREAS, accordingly, the applicant seeks a use variance to maintain the site’s historic residential use by constructing a new four-story multiple dwelling in accordance with the bulk regulations applicable in an R6A district; and

WHEREAS, initially, the applicant proposed a five-story multiple dwelling with 14,840 sq. ft. of floor area (2.97 FAR), 60 percent lot coverage, ten dwelling units, a rear yard depth of 34’-2”, and a total building height of 60 feet; and

WHEREAS, at the Board’s direction, through the hearing process, the proposal was reduced in height, number of stories, number of dwelling units, and FAR; and

WHEREAS, the applicant now proposes a four-story building multiple dwelling with 12,610 sq. ft. of floor area (2.52 FAR), 63 percent lot coverage, eight dwelling units, a rear yard depth of 30’-4”, and a total building height of 36’-0”; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s history of residential use and adjacency to residential buildings on all sides, and across the street; (2) its contaminated soil; and (3) its small lot size of 5,000 sq. ft. and narrow lot width of 50 feet; and

WHEREAS, the applicant states that a residential building has occupied the site for approximately 125 years, and that there are residential buildings directly adjacent to the lot on all sides and across the street; and

WHEREAS, in addition, the applicant notes that the site borders an MX-4 zoning district, where residences are permitted as-of-right; and

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WHEREAS, as to the building itself, the applicant provided an engineer's report that indicates that the building—with its awkward layouts, low ceilings, and lack of energy efficiency due to improper insulation—is obsolete for modern residential living and that, more importantly, it is structurally compromised in a manner that makes reconstruction infeasible; and

WHEREAS, moreover, the applicant states that even if the building could be restored to a habitable condition, residential use has been discontinued for more than two consecutive years and may not be resumed; and

WHEREAS, the applicant also represents that the site suffers from soil contamination; and

WHEREAS, specifically, the applicant provided a report that indicates the presence of unacceptable levels of lead and mercury within the soil; as such, soil management, transportation, and disposal in accordance with New York State Department of Environmental Conservation ("DEC") regulations is required, at significant cost; and

WHEREAS, finally, the applicant represents that the site's narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states that based on the small lot size, a conforming development would provide a maximum floor plate of 5,000 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, in support of its claim that the site—with its narrow lot width and small lot size—is not feasible for modern manufacturing use, the applicant conducted a study of all vacant sites within the subject M1-1 district; the applicant notes that vacant sites are comparable because the existing buildings at the site are in disrepair and must be demolished; and

WHEREAS, based on the study, the applicant concludes that, except two other sites on Franklin Avenue, vacant sites within the M1-1 district are either: (1) occupied by existing commercial or industrial uses; (2) adjacent to existing commercial or industrial uses; (3) located on streets where conforming uses predominate; or (4) located adjacent to other vacant sites, which could allow for a possible assemblage; and

WHEREAS, thus, the applicant concludes that only the subject site is too small to be developed independent of its neighboring sites, unable to develop in conjunction with adjacent sites (because it is surrounded by residences on all sides), and located on a predominantly residential street; and

WHEREAS, the Board disagrees with the applicant that a 5,000-sq.ft. site is particularly unique or prohibitively small to develop; however, the Board agrees with the applicant that the site's historic residential use, adjacency to other residential uses (indeed, the predominance of residential use on the block), and soil contamination, are unique physical

conditions, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 5,000 sq. ft. of floor area occupied by a manufacturing use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject block is primarily developed with residential buildings; the applicant notes that directly behind the site—the eastern half of the subject block—is an MX-4 zoning district, where the proposed use would be as-of-right; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and across the street; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1887 until 2009; thus, the applicant asserts that the site—and the subject stretch of Franklin Avenue—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the neighborhood character than a conforming use would be; and

WHEREAS, as to bulk, the applicant states that the building complies in all respects with the R6A bulk regulations; and

WHEREAS, at hearing, the Board expressed concerns regarding the compatibility of the originally-proposed building height and number of stories with the surrounding residential buildings; and

WHEREAS, in response, the applicant reduced the height from 60'-0" to 36'-0" and the number of stories from five to four, and provided a streetscape, which demonstrates that the proposal is consistent with the height of the surrounding residential buildings; and

WHEREAS, accordingly, the Board finds that this

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action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 12BSA108K, dated March 19, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the November 2013 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2014" – (11) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 12,610 sq. ft. (2.52 FAR), a maximum lot coverage of 63 percent, eight dwelling units, a minimum rear yard depth of 30'-4", and a maximum building height of 36'-0", as indicated on the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

160-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yitzchok and Hindy Blumenkrantz, owners.

SUBJECT – Application May 28, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1171-1175 East 28th Street, east side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

MINUTES

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated May 7, 2013, acting on DOB Application No. 320712001, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141, in that the proposed floor area ratio exceeds the maximum permitted
2. Proposed plans are contrary to ZR 23-141, in that the proposed open space ratio is less than the minimum required
3. Proposed plans are contrary to ZR 23-461, in that the proposed side yard is less than the minimum required
4. Proposed plans are contrary to ZR 23-47, in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a detached, single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the site, which is three tax lots (Lots 14, 15, and 16) that are to be combined into a single tax and zoning lot, has approximately 67 feet of frontage along East 28th Street and approximately 6,667 sq. ft. of lot area; and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant notes that Lot 14 is occupied by a detached single-family home with approximately 1,320 sq. ft. of floor area (0.5 FAR), Lot 15 is occupied by a semi-detached two-family home with approximately 1,429 sq. ft. (0.72 FAR), and Lot 16 is occupied by semi-detached two-family home with approximately 1,429 sq. ft. (0.72 FAR); and

WHEREAS, the applicant proposes to demolish the buildings on Lots 14 and 15 and enlarge the building on Lot 16; and

WHEREAS, specifically, the applicant seeks an increase in the floor area from of 1,429 sq. ft. (0.72 FAR) (as measured only with respect to the lot area of Lot 16) to 6,696 sq. ft. (1.0 FAR) (as measured with respect to the combined lot area of Lots 14, 15, and 16, which, as noted above, is approximately 6,667 sq. ft.); the maximum permitted floor area is 3,333 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to reduce the existing, non-complying open space ratio (as measured only with respect to Lot 16) from 85 percent to 66 percent (as measured with respect to the combined lot area of Lots 14, 15, and 16); the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain one existing, non-complying side yard (on Lot 16) with a width of 3’-10” and increase the width of the other existing non-complying side yard (on Lot 16) from 0’-0” to 9’-8” (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each); and

WHEREAS, the applicant also seeks to decrease its rear yard depth (on Lot 16) from 38’-1” to 20’-0”; a minimum rear yard depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that there are five other nearby sites (on the subject block or on the adjacent block) with similar lot area to the site’s 6,667 sq. ft.; and

WHEREAS, in addition, the applicant represents that the proposed 1.0 FAR is consistent with the bulk in the surrounding area and notes that there are 11 homes within the subject R2 district with FARs ranging from 1.0 to 1.14, eight of which were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove the parking space from the front of the building; and (2) include paths to each entrance at the front of the building; and

WHEREAS, in response, the applicant submitted amended plans showing a complying parking space and paths leading to each front entrance; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6

MINUTES

N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a detached, single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 12, 2014"-(11) sheets and "April 2, 2014"-(2) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,696 sq. ft. (1.0 FAR), a minimum open space ratio of 66 percent, side yards with minimum widths of 3'-10" and 9'-8", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

177-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Ratsenbg, owner.

SUBJECT – Application June 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, to be converted to a two-family home, contrary to floor area, lot coverage and open space (§ZR 23-141) and less than the required rear yard (§ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 134 Langham Street, west side of Langham Street between Shore Boulevard and Oriental Boulevard, Block 8754, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the New York City Department of Buildings ("DOB"), dated November 18, 2013, acting on DOB Application No. 320513592, reads in pertinent part:

1. Proposed floor area is contrary to ZR 23-141(b)
2. Proposed open space is contrary to ZR 23-141
3. Proposed lot coverage is contrary to ZR 23-461
4. Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the conversion (from a single-family home to a two-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Langham Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 60 feet of frontage along Langham Street and 6,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,913 sq. ft. of floor area (0.32 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks to convert the single-family home to a two-family home and increase the size of the residence, as set forth below; and

WHEREAS, the applicant seeks an increase in the floor area from of 1,913 sq. ft. (0.32 FAR) to 5,911 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 3,600 sq. ft. (0.6 FAR); and

MINUTES

WHEREAS, the applicant seeks to reduce its open space from 83 percent to 59 percent; the minimum required open space is 65 percent; and

WHEREAS, likewise, the applicant seeks to increase its lot coverage from 17 percent to 41 percent; the maximum lot coverage permitted is 35 percent; and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 22'-7" to 20'-0"; a minimum rear yard depth of 30'-0" is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant states that the proposed 0.99 FAR is consistent with the bulk in the surrounding area; in support of this statement, the applicant submitted a land use study, which reflects that of the 109 homes within 400 feet of the site, 22 homes (20 percent) are occupied by homes with an FAR of 0.8 or greater; and

WHEREAS, the applicant also notes that three homes across Langham Street have FARs of 0.99 or greater; and

WHEREAS, at hearing, the Board directed the applicant to verify that the proposal is in compliance with the flood zone regulations; and

WHEREAS, in response, the applicant represented that the proposal was in full compliance with the flood zone regulations; and

WHEREAS, finally, the Board notes that while a conversion from an existing single-family home to a two-family home is rare under ZR § 73-622, such conversion is consistent with the text of the special permit; in addition, the subject R3-1 zoning regulations permit the resulting density; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the conversion (from a single-family home to a two-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to

the objections above-noted, filed with this application and marked "Received March 20, 2014"- (11) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,911 sq. ft. (0.99 FAR), a minimum open space of 59 percent, a maximum lot coverage of 41 percent, and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB will verify the proposal's compliance with the flood zone regulations of the Zoning Resolution;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings ("DOB"), dated March 14, 2014, acting on DOB Application No. 320864695, reads in pertinent part:

The proposed enlargement creates new non-compliances, as follows:

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1. Increases the existing degree of non-compliance with reference to floor area and is contrary to sections 23-141;
2. Increases the existing degree of non-compliance for floor area ratio and is contrary to sections 23-141;
3. Increases the existing non-compliance for wall height contrary to sections 23-631;
4. Increase the existing non-compliance for rear yard and is contrary to sections 24-37; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), perimeter wall height, and rear yard, contrary to ZR §§ 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has a lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 3,612 sq. ft. (0.9 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks an increase in the floor area from of 3,612 sq. ft. (0.9 FAR) to 3,910 sq. ft. (0.98 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 2,400 sq. ft. (0.6 FAR); and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 25'-9" to 20'-0"; a minimum rear yard depth of 30'-0" is required; and

WHEREAS, finally, the applicant seeks to maintain and extend its existing, non-complying perimeter wall height of 24'-0"; the maximum permitted perimeter wall height is 21'-0"; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal

to or less than the height of the adjacent building's non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height (24'-0") is equal to the height of both adjacent buildings' non-complying perimeter walls facing the street 24'-0"); the applicant submitted the adjacent buildings' certificates of occupancy, which indicate that they and the subject building are substantially identical and were constructed at the same time with the same perimeter wall height facing the street; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that the proposed 0.98 FAR is consistent with the bulk in the surrounding area and that, within a 200-ft. radius of the site, every home has been enlarged in recent years; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 1, 2014"- (9) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,910 sq. ft. (0.98 FAR), a maximum perimeter wall height of 24'-0", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

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THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

268-13-BZ

APPLICANT – Belkin Burden Wenig & Goldman, LLP, for Rachel H.Opland, Adrienne & Maurice Hayon, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-621) to permit legalize an enlargement to a three-story mixed use building, contrary to lot coverage regulations (§23-141). R5 zoning district.

PREMISES AFFECTED – 2849 Cropsey Avenue, north east side of Cropsey Avenue, approximately 25.9 feet northwest from the corner formed by the intersection of Bay 50th St. and Cropsey Avenue, Block 6917, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated July 16, 2013, acting on DOB Application No. 302287200, reads in pertinent part:

Proposed lot coverage of 58.5 percent . . . [is] an increase in lot coverage of 3.3 percent; and

WHEREAS, this is an application under ZR § 73-621, to permit, within an R5 (C2-2) zoning district, legalization of an enlargement of an existing two-family home, which does not comply with the zoning requirements for lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot located on the east side of Cropsey Avenue, between Bay 49th Street and Bay 50th Street, within an R5 (C2-2) zoning district; and

WHEREAS, the site has 20 feet of frontage along Cropsey Avenue, approximately 31 feet of frontage along Bay 50th Street, and 1,845 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a three-story, two-family home with 3,240 sq. ft. of floor area (1.75 FAR); and

WHEREAS, the applicant represents that, in 2009, DOB approved plans for the redevelopment of the building under Application No. 302287200; the redevelopment included the construction of a third story, the relocation of the dwelling unit on the first story to the third story, and the conversion of commercial space on the first story to a community facility; and

WHEREAS, the applicant states that permits were issued in 2009, and construction proceeded; in 2011, DOB determined that the approval was erroneous, in that it permitted the filling-in of an existing courtyard, which increased the non-complying lot coverage for the building from 55.28 percent to 58.53 percent, which is not permitted under ZR §§ 23-141 and 54-31; and

WHEREAS, accordingly, the applicant now seeks to legalize the increase in lot coverage; and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted excerpts from the 1968, 1987, and 1989 Sanborn Maps to demonstrate that the building existed as a residence well before June 20, 1989, which is the operative date within the subject R5 (C2-2) district; the applicant also submitted an affidavit from one of the owners of the building and photographs from 1988 and 1989 to further support its representation that the building existed as a residence before June 20, 1989; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building, provided that the proposed lot coverage does not exceed 110 percent of the maximum permitted (55 percent); and

WHEREAS, the applicant represents that the proposed lot coverage (58.53 percent) is 106 percent of the maximum permitted (55 percent); and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

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WHEREAS, based on its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the legalization does not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings ZR §§ 72-21 and 73-621, to permit, within an R5 (C2-2) zoning district, legalization of an enlargement of an existing two-family home, which does not comply with the zoning requirements for lot coverage, contrary to ZR § 23-141; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 12, 2013"- (1) sheet and "January 14, 2014"-(6) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: three stories, two dwelling units, a maximum floor area of 3,240 sq. ft. (1.75 FAR), a maximum building height of 33'-6", 58.53 percent lot coverage, and a minimum rear yard depth of 46'-0", as per the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT significant construction will proceed in accordance with ZR §§ 72-23 and 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

276-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Adams Tower Limited Partnership, owner; Fastbreak, owner.

SUBJECT – Application September 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fastbreak*). C1-9 zoning district.

PREMISES AFFECTED – 1629 First Avenue aka 1617 First Avenue and 341 East 84th Street, west side First Avenue between East 84th & East 85th Street, Block 1547, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings ("DOB"), dated August 28, 2013, acting on DOB Application No. 121332851, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right; contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment ("PCE") on the ground floor, cellar, and sub-cellar of a 32-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in the *City Record*, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of First Avenue, between East 84th Street and East 85th Street, partially within a C1-9 zoning district and partially within an R8B zoning district; and

WHEREAS, the site has approximately 120 feet of frontage along East 84th Street, 204 feet of frontage along First Avenue, 75 feet of frontage along East 85th Street, and 19,992 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 32-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 1,098 sq. ft. of floor area on the ground floor, 1,632 sq. ft. of floor space in

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the cellar, and 4,161 sq. ft. of floor space in the sub-cellar, for a total PCE size of 6,891 sq. ft.; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R8B portion of the site; and

WHEREAS, the PCE will be operated as Fastbreak; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA047M dated September 24, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed

action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment (“PCE”) in the ground floor, cellar, and sub-cellar of a 32-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 14, 2014” – Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 8, 2024;

THAT the PCE use is limited to the C1-9 portion of the lot; and

THAT the hours of operation for the PCE will be limited to seven days per week, from 8:00 a.m. to 9:00 p.m.;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

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290-13-BZ

CEQR #14-BSA-058K

APPLICANT – Herrick, Feinstein LLP, by Arthur Huh, for Church Avenue Development LLC, owner; New Fitness Holdings LLC, lessee.

SUBJECT – Application October 21, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*) located on the second floor of a four-story building, C4-4A zoning district.

PREMISES AFFECTED – 2244 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated October 15, 2013, acting on DOB Application No. 320302016, reads, in pertinent part:

Proposed physical culture establishment is not permitted in a C4-4A zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in the *City Record*, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the south side of Church Avenue, between Flatbush Avenue and Bedford Avenue, within a C4-4A zoning district; and

WHEREAS, the site has approximately 171 feet of frontage along Church Street and 22,153 sq. ft. of lot area; and

WHEREAS, under construction at the site is a four-story commercial building, with office and retail space and approximately 73,683 sq. ft. of floor area (3.3 FAR); and

WHEREAS, the proposed PCE will occupy approximately 599 sq. ft. of floor area on the first story and approximately 17,687 sq. ft. of floor area on the second story, for a total PCE floor area of approximately 18,286 sq. ft.; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to confirm that there is no parking required for the PCE use and that the proposed signage is in accordance with the C4 district regulations; and

WHEREAS, in response, the applicant provided a zoning analysis confirming that the proposed parking and signage are in compliance; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA058K dated January 29, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise;

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Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C4-4A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 7, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 8, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

306-13-BZ

APPLICANT – Lewis E. Garfinkel for Howard Berglas, owner.

SUBJECT – Application November 20, 2013 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-141); and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3766 Bedford Avenue, west side of Bedford Avenue, 350’ south of corner of Bedford Avenue and Avenue P, Block 6787, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the New York City Department of Buildings (“DOB”), dated February 25, 2014, acting on DOB Application No. 320590473, reads in pertinent part:

1. ZR 23-141(b) - Proposed floor area exceeds permitted floor area;
2. ZR 23-141(b) - Proposed open space is less than permitted;
3. ZR 23-141(b) - Proposed enlargement exceeds permitted lot coverage;
4. ZR 23-47 - Proposed rear yard is less than required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-2 zoning district, the conversion (from a two-family home to a single-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 11, 2013, after due notice by publication in *The City Record*, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue P and Quentin Road, within an R3-2 zoning district; and

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WHEREAS, the site has 50 feet of frontage along Bedford Avenue and 5,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-family home with 3,528 sq. ft. of floor area (0.71 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks to convert the two-family home to a single-family home and increase the size of the residence, as set forth below; and

WHEREAS, the applicant seeks an increase in the floor area from of 3,528 sq. ft. (0.71 FAR) to 3,664 sq. ft. (0.73 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce its open space from 63 percent to 62 percent; the minimum required open space is 65 percent; and

WHEREAS, likewise, the applicant seeks to increase its lot coverage from 37 percent to 38 percent; the maximum lot coverage permitted is 35 percent; and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 29'-6" to 27'-4"; a minimum rear yard depth of 30'-0" is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant states that the proposed 0.73 FAR is a modest increase from the existing, non-complying 0.71 FAR, and that the building is consistent with the setback, appearance, and height of the existing streetscape; and

WHEREAS, at hearing, the Board directed the applicant to verify that the proposed turret is within the required building envelope; and

WHEREAS, in response, the applicant submitted revised drawings showing that the turret is in compliance; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 zoning district, the conversion (from a two-family home to a single-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for

FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 25, 2013"- (12) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,664 sq. ft. (0.73 FAR), a minimum open space of 62 percent, a maximum lot coverage of 38 percent, and a minimum rear yard depth of 27'-4", as illustrated on the BSA-approved plans;

THAT DOB will verify the proposal's compliance with the flood zone regulations of the Zoning Resolution;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

34-14-BZ & 498-83-BZ

CEQR #14-BSA-079R

APPLICANT – Rampulla Associates Architects, for Anthony Vasaturo, owner; MS Fitness, LLC, lessee.

SUBJECT – Application February 19, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Club Metro USA*) within an existing building.

Amendment of a previously approved variance (§72-21) to permit the change of use from a banquet hall (UG9 & 12), reduce building size and retain accessory parking in residential district. C8-1/R3X zoning district.

PREMISES AFFECTED – 2131 Hylan Boulevard, north side of Hylan Boulevard, corner formed by the intersection of Hylan Boulevard and Bedford Avenue, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

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WHEREAS, the decision of the Staten Island Borough Commissioner of the Department of Buildings (“DOB”), dated November 21, 2013, acting on DOB Application No. 520167809, reads, in pertinent part:

Proposed conversion of an existing banquet hall to a physical culture establishment located in a C8-1 and R3X zoning district requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C8-1 zoning district and partially within an R3X zoning district, the operation of a physical culture establishment within an existing three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 25, after due notice by publication in the *City Record*, and then to decision on April 8, 2014; and

WHEREAS, a companion application to permit an amendment to a previously-granted variance under BSA Cal. No. 498-83-BZ (which authorized the operation of a banquet hall and accessory parking lot within a residence district) was decided at the same hearing; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of the application; and

WHEREAS, the subject site is on the southwest corner of the intersection of Hylan Boulevard and Bedford Avenue, partially within a C8-1 zoning district and partially within an R3X zoning district; and

WHEREAS, the site has approximately 131 feet of frontage along Hylan Boulevard, approximately 228 feet of frontage along Bedford Avenue, and 29,819 sq. ft. of lot area; and

WHEREAS, the site is divided by a district boundary, with the first 100 feet of depth west of Hylan Boulevard within a C8-1 zoning district, and the remaining 128 feet of depth within an R3X zoning district; and

WHEREAS, the site is occupied by a three-story commercial building with 22,878 sq. ft. of floor area (0.79 FAR) and 37 accessory parking spaces; and

WHEREAS, the applicant proposes to remove the portion of the building within the R3X portion of the site, which will reduce the floor area of the building from 22,878 sq. ft. of floor area (0.79 FAR) to 15,661 sq. ft. (0.52 FAR), convert the remaining portions of the building to a PCE, and increase the number of accessory parking spaces from 37 to 51; and

WHEREAS, the PCE will be operated as Club Metro USA; and

WHEREAS, the applicant represents that, aside from its accessory parking, the PCE will operate entirely within the

C8-1 portion of the site; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Thursday, from 4:30 a.m. to 12:00 a.m., Friday, from 4:30 a.m. to 10:00 p.m., Saturday, from 6:00 a.m. to 10:00 p.m., and Sunday, from 6:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14-BSA-079R dated December 11, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the

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environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially within a C8-1 zoning district and partially within an R3X zoning district, the operation of a physical culture establishment within an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received March 28, 2014’ – (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 8, 2024;

THAT the parking lot will be limited to 51 spaces and will be used only by patrons and employees of the PCE;

THAT signage and landscaping/buffering of the parking lot will be in accordance with the BSA-approved plans;

THAT signage will be in accordance with the BSA-approved plans;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT an amended certificate of occupancy will be obtained by April 8, 2015;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

299-12-BZ

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for deferred decision.

311-12-BZ

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for adjourned hearing.

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124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

163-13-BZ

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application May 30, 2013 – Special Permit (§73-44) to allow the reduction of parking spaces for the enlargement of a building containing Use Group 6 professional offices. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, 39th Avenue, east of College Pt. Boulevard, Block 4973, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of a physical culture establishment (*The Physique*). C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

233-13-BZ

APPLICANT – Law office of Fredrick A. Becker, for Kayvan Shadrour, owner.

SUBJECT – Application August 12, 2013 – Special Permit (§73-622) for an enlargement of an existing single family residence, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2413 Avenue R, North side of Avenue R between East 24th Street and Bedford Avenue. Block 6807, Lot 48. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

246-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

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269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

289-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new, 304,000 s.f. ambulatory care facility on the campus of New York Methodist Hospital, contrary to floor area (§§24-11, 24-17 and 77-02), lot coverage (§24-11), rear yard (§24-382), height and setback (§24-522), rear yard setback (§24-552), and sign (§22-321) regulations. R6, C1-3/R6, and R6B zoning district.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a three-story, six-unit residential building, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

302-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Claret Commons Condominium, owner; Peloton, lessee.

SUBJECT – Application November 15, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Peloton Fitness*). C6-3X zoning district.

PREMISES AFFECTED – 140 West 23rd Street, S/S West 23rd Street between 6th and 7th Avenues. Block 798, Lot 7503. Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

305-13-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza, LLC, owner; Whitestone Fitness D/B/A Dolphin Fitness, lessee.

SUBJECT – Application November 20, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Dolphin Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 30-50 Whitestone Expressway, Bounded by Ulmer Street to the north, Whitestone Expressway to the East and 31st Avenue to the south. Block 4363, Lot 100. Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

318-13-BZ

APPLICANT – Bryan Cave LLP, for TJD 21 LLC, owners.
SUBJECT – Application December 13, 2013 – Variance (§72-21) to permit a five-story building containing retail and residential use, contrary to use regulations (§44-00). M1-5B zoning district.

PREMISES AFFECTED – 74 Grand Street, North side of Grand Street, 25 feet east of Wooster Street. Block 425, Lot 60, Borough of Manhattan.

COMMUNITY BOARD # 2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 8, 2014

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Tuesday, April 29, 2014**

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DOCKETS

New Case Filed Up to April 29, 2014

56-14-BZ

161-51/6 Bailey Boulevard, North West Corner of Guy Brewer Boulevard, Block 12256, Lot(s) 36, Borough of **Queens, Community Board: 12**. Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses; Amendment to permit the erection of a canopy; Waiver of the Rules C1-3/R3-A zoning district. C1-3,R3-A district.

57-14-BZ

1 New York Plaza 114-142, Entire City block bounded by Broad St., South St., Whitehall St. and Water St., Block 4, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment in the sub-cellar of a fifty story building. C5-5(LM) zoning district. C5-5(LM) district.

58-14-BZ

737 61st Street, Located on the north side of 61st Street between 7th Avenue and 8th Avenue, Block 5785, Lot(s) 52, Borough of **Brooklyn, Community Board: 07**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a Use Group 4 ambulatory diagnostic and treatment health care facility use located in a proposed 6-story and cellar building also containing a Use Group 5 commercial hotel. M1-1 zoning district. M1-1 district.

59-14-BZ

114-122 Jackson Street, Located on the SW corner of the Intersection of Jackson Street and Manhattan Avenue, Block 2748, Lot(s) 21, Borough of **Brooklyn, Community Board: 1**. VARIANCE 72-21 to permit the construction of a four-story plus penthouse community facility (Use Group 4) on the premises contrary to (ZR24-11). R6B zoning district R6B district.

60-14-BZ

141-41 72nd Avenue, 72nd Avenue between Main Street and 141st Street, Block 6620, Lot(s) 41, Borough of **Queens, Community Board: 8**. Variance (§72-21) to enlarge a community facility (Sephardic Congregation), contrary to floor lot coverage rear yard, height and setback (24-00). R4-1 zoning district. R4-1 district.

61-14-A

11 Massachusetts Street South, Southeast corner of intersection of Hylan Boulevard and Massachusetts Street, Block 7936, Lot(s) 3 tent), Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-story two family dwelling located within the bed of unmapped street, contrary to Article 3 Section 36 of the General City law. R3X(SRD) zoning district. R3X(SRD) district.

62-14-A

727 Fifth Avenue, Situated on the South Side of East 57th Street, 0.feet East of the corner formed by the intersection of East 57th Street and Fifth Avenue, Block 1292, Lot(s) 069, Borough of **Manhattan, Community Board: 5**. Appeal application challenging Department of Buildings determination that a proposed illuminated sign cannot be considered an advertising sign and also seeks to vary Building Code Section 3202.2.1.8 which prohibits signs projecting more than 10 feet beyond the streetline . C5-3 Fifth Aveue Subdistrict C5-3 district.

63-14-BZ

5500 Watermill Lane, Southeast corner of intersection of Broadway and W 230th Street, Block 3264, Lot(s) 109, Borough of **Bronx, Community Board: 8**. Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment. M1-1 zoning district. M1-1 district.

64-14-BZ

1320 East 23rd Street, West side of Eat 23rd Street between Avenue M and Avenue, Block 7658, Lot(s) 58, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a single family residence. R2 zoning district. R2 district.

65-14-A

12 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 148, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

DOCKETS

66-14-A

14 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 149, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

67-14-A

18 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 150, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

68-14-A

20 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 151, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

69-14-A

29 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 152, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

70-14-A

11 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 153, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

71-14-A

15 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 154, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

72-14-A

19 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 155, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

73-14-A

23 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 156, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

74-14-A

27 Apricot Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 157, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

75-14-A

8 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 158, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

76-14-A

10 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 159, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

77-14-A

14 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 160, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

78-14-A

16 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 161, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

79-14-A

20 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 162, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

DOCKETS

80-14-A

22 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 163, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

81-14-A

26 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 164, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

82-14-A

9 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 165, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

83-14-A

11 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 166, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

84-14-A

15 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 167, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

85-14-A

17 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 168, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

86-14-A

21 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 169, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

87-14-A

23 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 170, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(SRD) district.

88-14-A

27 Lomondrop Court, Northwest of intersection of Turner Street and Crabtree Avenue, Block 7105, Lot(s) 171, Borough of **Staten Island, Community Board: 3**. GCL 36 of Article 3 of the General City Law proposed construction not on a legally mapped street. R3-1(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

MAY 13, 2014, 10:00 A.M.

ZONING CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 13, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

278-86-BZ

APPLICANT – Eric Palatnik P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 29, 2013 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-thru facility to an eating and drinking establishment. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fteley Avenue thru to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Baron Properties III, Inc., owner.

SUBJECT – Application October 1, 2013 – Extension of Term and Time to get a Certificate of Occupancy previously granted under Variance (72-21) for the continued operation of a UG16 Automotive Repair Shop (*Genesis Auto Town*) which expired on January 23, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2001; Waiver of the Rules. C2-2(R3-2) zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, northwest corner of intersection of Northern Boulevard and 201st Street, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue and Rabbi's residence (UG 4) and the legalization of a Mikvah contrary to zoning requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

225-13-BZ

APPLICANT – Eric Palatnik, P.C., for Yitta Neiman, owner.

SUBJECT – Application July 25, 2013 – Variance (§72-21) to permit residential development contrary to ZR 42-00. M1-2 zoning district.

PREMISES AFFECTED – 810 Kent Avenue, east Side of Kent Avenue between Little Nassau Street and Park Avenue, Block 1883, Lot 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #3BK

284-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 168-42 Jamaica LLC, owner; 168 Jamaica Avenue Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*fitness center*) on the cellar and the first floor of the building. R6-A/C2-4 (DJ) zoning district.

PREMISES AFFECTED – 168-42 Jamaica Avenue, south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot 22, Borough of Queens.

COMMUNITY BOARD #12Q

316-13-BZ

APPLICANT – Slater & Beckerman, PC, for 210 Joralemon Street Condominium, owner; Yoga Works, Inc., lessee.

SUBJECT – Application December 9, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*fitness center*) in the cellar and first floor of the premises. C5-2A (Special Downtown Brooklyn) zoning district.

PREMISES AFFECTED – 210 Joralemon Street, southeast corner of Joralemon Street and Court Street, Block 266, Lot 7501 (30), Borough of Brooklyn.

COMMUNITY BOARD #3BK

CALENDAR

16-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saul Greenberger & Rochelle Greenberger, owners.

SUBJECT – Application January 27, 2014 – Special Permit (§73-621) for the enlargement of an existing one family residence contrary to floor area, lot coverage and open space (ZR §23-141). R3-2 zoning district.

PREMISES AFFECTED – 1648 Madison Place, west side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #18BK

20-14-BZ

APPLICANT – Sandy Anagnostou, Assoc, AIA, for 310-312 Owners Corp. LLC, owner; John Vatisas, NHMME, lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to permit the operation of a physical culture (Spa) establishment on the first floor level of an existing mixed use building in a C1-9A district contrary to §32-31 zoning resolution.

PREMISES AFFECTED – 312 East 23rd Street, south side of East 23rd Street 171' east from the corner of 2nd Avenue and East 23rd Street, Block 928, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #10M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 29, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

5-28-BZ

APPLICANT – Eric Palatnik, P.C., for Steven Feldman,
owner; Anwar Ismael, lessee.

SUBJECT – Application August 20, 2013 – Amendment
(§11-413) of a previously approved variance which
permitted the operation of an automotive service station
(UG 16B). The amendment seeks to change the use to a car
rental establishment (UG 8). R6 zoning district.

PREMISES AFFECTED – 664 New York Avenue, west
side of New York Avenue, spanning the entire length of the
block between Hawthorne Street and Winthrop Street,
Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
a change in use from an automobile repair station (Use
Group 16) to an automobile rental establishment (Use Group
8); and

WHEREAS, a public hearing was held on this
application on February 4, 2014, after due notice by
publication in the *City Record*, with continued hearings on
March 4, 2014 and April 1, 2014, and then to decision on
April 29, 2014; and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Chair Srinivasan,
Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 9, Brooklyn,
recommends approval of the application; and

WHEREAS, the subject site spans the west side of
New York Avenue between Hawthorne Street and Winthrop
Street, within an R6 zoning district; and

WHEREAS, the site has approximately 44 feet of
frontage along Hawthorne Street, 212 feet of frontage along
New York Avenue, approximately 35 feet of frontage along
Winthrop Street, and 8,440 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story
building with approximately 1,733 sq. ft. of floor area (0.21

FAR); and

WHEREAS, on June 12, 1928, under the subject
calendar number, the Board denied a variance to permit the
construction of an automotive service station in a residence
district; and

WHEREAS, on June 14, 1938, the Board granted an
application to reopen the previously-denied variance
application, and on September 27, 1938, the Board denied an
amended version of the original variance application, which
sought a variance to permit the construction of a gasoline
service station in a business use district; and

WHEREAS, on October 3, 1961, the Board reopened
the application again and granted a variance to permit
construction of a gasoline service station with lubricatorium,
minor auto repairs, non-automatic car wash, storage room,
office and sales, parking and storage of motor vehicles, on a
site partially within a retail use district and partially within a
manufacturing use district; in addition, the Board authorized
the construction of ground and wall signs within 75 feet of
the nearby residence use district; and

WHEREAS, on October 30, 1962, the Board granted
an extension of time to complete construction and obtain a
certificate of occupancy; and

WHEREAS, the applicant represents that in 1986—
when the current owner of the site purchased it from the City
of New York—the site was changed from a gasoline service
station to an automobile repair station and has operated
continuously as “B & S Diagnostic” ever since; and

WHEREAS, the applicant now proposes to renovate
the existing building to accommodate the proposed Use
Group 8 automobile rental establishment; the establishment
will be operated as an Enterprise Rent-a-Car and it will have
23 accessory parking spaces (18 storage spaces on the south
side of the site and five spaces on the north side dedicated to
returns); and

WHEREAS, the applicant states that the proposed
hours of operation for the establishment will be Monday
through Friday from 7:30 a.m. to 6:00 p.m., Saturday 9:00
a.m. to 12:00 p.m., and closed Sunday; and

WHEREAS, pursuant to ZR § 11-413, the Board may
grant a request for a change in use from one non-
conforming use to another non-conforming use which
would be permitted under one of the provisions applicable
to non-conforming uses as set forth in ZR §§ 52-31 to 52-
36; and

WHEREAS, the applicant represents that its request for
a change in use from a Use Group 16 use to a Use Group 8
use is consistent with ZR § 52-332(a) (*Change of Non-
Conforming Use/Other buildings or structures in residence
districts*), which allows for the conversion of non-conforming
Use Group 16 to Use Group 8 use in residential zoning
districts; and

WHEREAS, the applicant states that the change in
use will not alter the essential character of the
neighborhood, as a Use Group 16 use operated at the site
for more than 50 years; as such, a non-conforming use at

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the site is well-established; and

WHEREAS, the applicant contends that the proposed Use Group 8 use will be less intense than the Use Group 16 automobile repair station and offer a much-needed service to an underserved neighborhood; and

WHEREAS, the applicant also states that while residences predominate in the surrounding community, large community facility buildings are located nearby, including Kings County Hospital, the NYC Office of the Chief Medical Examiner, the Kingsborough Psychiatric Center, and SUNY Downstate Medical Center; in addition, there are other automotive-related uses nearby, including a service station and a parking garage on adjacent blocks; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the impact of the proposed use on traffic; (2) the lack of landscaping; (3) the excessive curb cuts; and (4) the proposed circulation of vehicles within the site; and

WHEREAS, in response, the applicant provided a traffic study, which reflects that the proposal will reduce the traffic from its current 48 trips-per-day to Enterprise Rent-A-Car's anticipated 37 trips-per-day, and an amended plan sheet depicting additional landscaped areas; and

WHEREAS, as to the landscaping, the applicant added plantings along Winthrop Street; and

WHEREAS, as to the excessive curb cuts, the applicant stated that the application seeks to legalize four existing curb cuts and eliminate the other two curb cuts; and

WHEREAS, as to vehicle circulation within the site, the applicant submitted a plan sheet, which reflects the traffic flow designed to allow maneuverability; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 11-413.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 15, 1970, so that as amended this portion of the resolution shall read: "to permit a change in use from automobile service station (Use Group 16) to an automobile rental establishment (Use Group 8); *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received April 4, 2014'-(6) sheets; and *on further condition*:

THAT the hours of operation will be limited to Monday through Friday from 7:30 a.m. to 6:00 p.m., Saturday 9:00 a.m. to 12:00 p.m., and closed Sunday;

THAT there will be no street parking of rental automobiles;

THAT lighting will be directed away from the adjoining residential buildings;

THAT the signage and landscaping will be in accordance with the BSA-approved plans;

THAT the above conditions will be listed on the

certificate of occupancy;

THAT all construction will be completed and a certificate of occupancy will be obtained by April 29, 2015;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application February 11, 2014 – Extension of Time to Complete Construction of a previously approved variance (§72-21) permitting an 11-story residential building with commercial on the ground floor, contrary to bulk regulations, which expired on January 12, 2014. C6-1 district.

PREMISES AFFECTED – 813-815 Broadway, west side of Broadway, 42' south of East 12th Street, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an extension of time to complete construction pursuant to a variance, which permitted the construction of an 11-story mixed residential and commercial building that does not comply with residential FAR, open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the west side of Broadway, between East 11th Street and East 12th Street, within a C6-1 zoning district; and

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WHEREAS, the Board has exercised jurisdiction over the subject site since July 1, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of an 11-story mixed-use building with ground floor commercial space and 40 dwelling units, which does not comply with residential FAR, open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22; and

WHEREAS, in addition, on January 12, 2010, the Board granted an amendment to the variance to permit the addition of a second elevator in the building and a sub-cellar; and

WHEREAS, by the terms of the original grant, construction was to be substantially completed by July 1, 2012; however, as of that date, due to the transfer of ownership of the site and difficulties relating to financing, construction was not completed; and

WHEREAS, accordingly, the applicant now seeks a waiver of the Rules of Practice and Procedure and an extension of time to substantially complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions, as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 1, 2008, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction to April 29, 2018; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction will be completed by April 29, 2018;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 104072076)

Adopted by the Board of Standards and Appeals, April 29, 2014.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq. of Kramer Levin Naftalis & Frankel LLP, for Central Synagogue, owner.

SUBJECT – Application February 26, 2014 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (*Central Synagogue*), which expires on February 23, 2014. C5-2 & C5-2.5 (MiD) zoning district. PREMISES AFFECTED – 123 East 55th Street, North side of East 55th Street, between park and Lexington Avenue, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

142-92-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application March 20, 2014 – Amendment of a previously approved special permit (§73-48) for a community facility (*New York Methodist Hospital*). The application seeks to amend the approved plans to accommodate required accessory parking in a new ambulatory care facility (BSA Cal #142-92-BZ)

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block 1084, Lot 36, 164, 1001/1002, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

186-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (UG 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

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COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over June 10, 2014, at 10 A.M., for continued hearing.

178-99-BZ

APPLICANT – Eric Palatnik, P.C., for Saltru Associates Joint Venture, owner.

SUBJECT – Application November 30, 2012 – Amendment (§§72-01 & 72-22) of a previously granted variance (§72-21) which permitted an enlargement of an existing non-conforming department store (UG 10A). The amendment seeks to replace an existing 7,502 sf ft. building on the zoning lot with a new 34,626 sq. ft. building to be occupied by a department store (UG 10A) contrary to §42-12. M3-1 zoning district.

PREMISES AFFECTED – 8973/95 Bay Parkway, 1684 Shore Parkway, south side of Shore Parkway, 47/22' west of Bay Parkway, Block 6491, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

2014, at 10 A.M., for decision, hearing closed.

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application January 2, 2014 – Amendment of an approved Variance (§72-21) which permitted construction of a two-story and mezzanine, two-family residential building, contrary to front yard regulations (§23-45(a)); the amendment seeks to permit construction of a three-story, three-family residential building. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

371-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 655 Fifth Avenue LLC, owner; Sator Realty, Ink, lessee.

SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Facility*) which expire0s May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 655 Fifth Avenue, northeast corner of Fifth Avenue and East 52nd Street, Block 1288, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

372-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Sator Realty, Ink, owner.

SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Facility*) which expire0s May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 663 Fifth Avenue, East side of Fifth Avenue, between East 52nd and 53rd Streets, Block 1288, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

143-11-A thru 146-11-A

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department’s determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district.

PREMISES AFFECTED – 20, 25, 35, 40 Harborlights COURT, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten

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Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Chief of Operations of the New York City Fire Department (“Fire Department”) on August 18, 2011, in response to a request for a variance (the “Final Determination”), which states, in pertinent part that:

[t]he Fire Department, Bureau of Operations has reviewed the variance request and the revised site plan dated May 21, 2009 for the above site in the Borough of Staten Island and must reject your request . . .

The grade of the fire apparatus access road shall not exceed ten percent under New York City Fire Code Section FC 503.2.7. This requirement is necessary for Fire Department ladder companies to properly ladder the building. This is seen as a potentially dangerous obstruction to response for our fire operation units; and

WHEREAS, this appeal seeks to reverse a Fire Department determination denying a request for a variance of FC § 503.2.7, which, provides that “[t]he grade of the fire apparatus access road shall not exceed ten percent unless approved by the commissioner”; and

WHEREAS, a public hearing was held on this appeal on June 11, 2013, after due notice by publication in *The City Record*, with continued hearings on August 20, 2013, September 24, 2013, October 29, 2013, and February 25, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, declined to make a recommendation regarding this application; and

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, certain members of the surrounding community, including a neighborhood group known as the Serpentine Art and Nature Commons, Inc., provided testimony in opposition to the application (the “Opposition”), citing concerns about the Fire Department’s ability to access the proposed homes, the widening of the access road to 30 feet (and its effect on a nearby existing building), the safety of the proposed embankments along the access road, and the overall effect of the development on the neighboring topography, vegetation, soil, property values, sightlines, and

drainage; in addition, the Opposition expressed its preference for a ten-percent access road slope and three homes at the site instead of the proposed four; and

WHEREAS, the subject site is located east of Howard Avenue, within an R2 zoning district within the Special Hillside Preservation District; and

WHEREAS, the site has 75,357 sq. ft. of lot area and an average site slope of 19.5 percent, making it a Tier II site pursuant to ZR § 119-01; and

WHEREAS, the site is vacant, does not front on any mapped streets, and is accessible via easement agreement with the owner of the lot directly west of the site (Block 615, Lot 40); the easement also provides for the installation of underground utilities; and

WHEREAS, the site has been under the Board’s jurisdiction since September 22, 1992, when, under BSA Cal. Nos. 54-92-A through 58-92-A, the Board waived General City Law § 36 to permit the construction of five homes without frontage on a mapped street; instead, the homes fronted on Harborlights Court, an access road with a width of 30’-0” and an average slope of 14 percent; and

WHEREAS, the proposed site plan for BSA Cal. Nos. 54-92-A through 58-92-A was reviewed and approved by the Fire Department by letter dated September 4, 1992; and

WHEREAS, construction pursuant to the 1992 Board grants was also subject to City Planning Commission (“CPC”) authorization under ZR §§ 119-316 and 119-317, due to the sloping nature of the site itself and of Harborlights Court; on April 20, 1994, CPC issued the authorization, however, the development was never constructed and in 1999, CPC adopted amendments to the Special Hillside Preservation District, which invalidated the 1994 approval; and

WHEREAS, by letter dated April 17, 2006, the Board authorized a reduction in the number of homes permitted under BSA Cal. Nos. 54-92-A through 58-92-A from five to four and a change in the roadway terminus from a hammerhead to a cul-de-sac; the slope remained as originally at 14 percent; and

WHEREAS, on July 26, 2006, CPC authorized the revised plan pursuant to ZR §§ 119-316 and 119-317, and by letter dated August 17, 2007, the Fire Department approved the site plan as well; and

WHEREAS, subsequently, the site was redesigned to provide a slope of 17 percent, which the Fire Department disapproved by letter dated July 7, 2009, citing FC § 503.2.7; and

WHEREAS, on January 4, 2010, the Appellant filed a variance application with the Fire Department, which, on August 18, 2011 denied the request and issued the Final Determination that forms the basis for this appeal; and

WHEREAS, through the hearing process and in response to comments by the Board and recommendations from CPC, the Appellant reduced the proposed access road slope from 17 percent to 13.59 percent; and

WHEREAS, nevertheless, the Fire Department

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maintained its position that it would not approve an access road slope in excess of ten percent; and

WHEREAS, accordingly, the appellant requests that the Board grant the subject appeal waiving the ten percent slope required under FC § 503.2.7 and approving, in the alternative, a slope of 13.59 percent; and

WHEREAS, the Board notes that, pursuant to New York City Charter § 666(6)(b), it has the power to review an appeal of a Fire Department determination by reversing or affirming in whole or in part, or modifying the requirement set forth in the determination; and

WHEREAS, in addition, pursuant to Charter § 666(7), in reviewing an appeal of a Fire Department determination, the Board may vary the underlying requirement if it finds that: (1) there is a practical difficulty or unnecessary hardship in complying with the strict letter of the law; (2) the alternative is within the spirit of the law and secures public safety; and (3) substantial justice is done; and

WHEREAS, the Appellant asserts that there exists a practical difficulty in complying with a maximum access road slope of ten percent due to the existing slope of the site, which, from the west side of the access road abutting Howard Avenue to the easternmost portion of the site, has a grade change of 116 feet and, as noted above, an average site slope of 19.5 percent; and

WHEREAS, the Appellant also asserts that the alternative—a slope of 13.59 percent—is within the spirit of the law and secures public safety, in that: (1) the access road will provide access to only four, single-family homes; (2) the homes will be fully-sprinklered; (3) there will be no street parking along the roadway with “no parking” signs posted in accordance with FC § 503.7 and BSA Cal. Nos. 54-92-A through 58-92-A; (4) each home’s driveway will be oversized; and (5) two new fire hydrants will be installed along the roadway; and

WHEREAS, as to substantial justice, the Appellant states that it explored the feasibility of providing a complying (ten-percent slope) and determined that in order to achieve a complying slope, the length of the roadway would have to be increased to 497 linear feet, which is contrary to Fire Code § 503.2.5 (which limits the length of a private road to 400 linear feet); thus, a secondary road would be required, which is impossible given the location of the site with respect to adjacent sites and existing buildings; and

WHEREAS, the Appellant states that a ten-percent slope would also require larger retaining walls and more impervious surfaces than are desirable under the Special Hillside Preservation District regulations and require encroachment on a portion of the site that CPC previously declared to be a preservation area; further, constructing retaining walls to provide the ten-percent slope would be too costly to be offset by the construction of four homes; and

WHEREAS, therefore, the Appellant represents that complying with the Fire Department requirement would make construction on the site infeasible; and

WHEREAS, the Appellant states that prior to the

enactment of the 2008 Fire Code, a slope of 13 percent was permitted; in addition, as noted above, the Fire Department approved a slope of 14 percent for the site in 1992 and again in 2007; and

WHEREAS, finally, at the Board’s request, the Appellant identified numerous nearby access roads with slopes in excess of the proposed 13.59 percent, including: Highview Avenue between East Buchanan Street and Eadie Place (16 percent); Highview Avenue between Eadie Place and Fillmore Street (between 18.2 percent and 21.2 percent); York Terrace between East Buchanan Street and Fillmore Street (between 15.8 percent and 16.4 percent); Occident Avenue between St. Pauls Avenue and Marion Street (between 14.4 percent and 16.2 percent); Concord Place between Richmond Road and Longview Road (between 13.8 percent and 16.5 percent); and Howard Court (between 14 percent and 15.5 percent); and

WHEREAS, in response to the Appellant’s assertions, the Fire Department states that, due to the curving nature of the road, a slope in excess of ten percent would present a serious operational challenge to firefighting operations at the site due to the limitations of its equipment; and

WHEREAS, the Fire Department states that it is aware of the prior approvals at the site as well as nearby existing roads with similar or steeper grades; nevertheless, it states that because the ten-percent requirement is to ensure safe operation of and proper access for its firefighting apparatuses, waiver of such requirement is improper and poses a danger to homeowners and firefighters; and

WHEREAS, the Board acknowledges the Fire Department’s interest ensuring that its equipment may be operated in the most efficient manner and that as roads become steeper, such operation may be made more challenging; and

WHEREAS, nevertheless, the Board finds that slopes in excess of ten percent may be safe where accompanied by other safety measures; indeed, a slope exceeding ten percent was contemplated by FC § 503.2.7 by its terms (“the grade of the fire apparatus access road shall not exceed ten percent *unless* approved by the commissioner”); and

WHEREAS, further, the Board notes that when presented with evidence of nearby access roads, including many with steeper slopes and narrower widths than the proposed access road, the Fire Department provided no information regarding how its operations change with respect to such roads; and

WHEREAS, the Board also notes that the Fire Department did not articulate any conditions under which it would endorse an access road slope of greater than ten percent; and

WHEREAS, turning to the variance findings, the Board agrees with the Appellant that the existing slope of the site in combination with the Special Hillside Preservation District regulations present a practical difficulty complying with the strict letter of FC § 503.2.7; and

WHEREAS, in particular, the Board observes that FC

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§ 503.2.7 and the Special Hillside Preservation District regulations further different policy objectives and reflect different perspectives on the appropriate development of the site – due to the existing slope of the site, compliance with the Fire Code provision would require substantial fill, which is unlikely to be permitted under the Special Hillside Preservation District regulations; accordingly, a site plan that is satisfactory to the Fire Department is unlikely to be satisfactory to CPC, and this inherent incompatibility presents a significant practical difficulty in developing the site; and

WHEREAS, the Board also agrees that the proposal’s additional safety measures—namely, the limited density, the sprinklering, the no parking zones, and the additional fire hydrants—bring the proposal within the spirit of the law and secure public safety; and

WHEREAS, in addition, the Board requires that the roadway be constructed using asphalt porous pavement or a similar system, as recommended by the Department of Transportation (“DOT”), in order to maximize traction, and that DOT approve a Builders Pavement Plan for the intersection of Harborlights Court and Howard Avenue; and

WHEREAS, as to substantial justice, the Board agrees with the Appellant that development of the site is infeasible using a ten-percent slope for the road and that the proposal represents an alternative that is both technically and financially feasible and consistent with the objectives of the Special Hillside Preservation district regulations; and

WHEREAS, as to the Opposition’s concerns regarding the widening of the access road to a width of 30 feet, the Board notes that the Appellant submitted a copy of its easement agreement for access and utilities; the agreement indicates that the width of the easement is 30 feet; to the extent that the Appellant would seek to diminish the 30-foot width, an amendment to this grant would be required; and

WHEREAS, as to the Opposition’s concern regarding changes to the topography, vegetation, and drainage, the Board observes that the site plan is subject to CPC approval under the Special Hillside Preservation District regulations and that this grant is limited to a variance of FC § 503.2.7 and should not be construed as an endorsement of the project with respect to the Zoning Resolution or Building Code; and

WHEREAS, as to the Opposition’s preference for a ten-percent slope and the construction of three homes instead of four, the Board notes that although such a scenario would reduce the length of the access road, it would be inconsistent with the objectives of the Special Hillside Preservation District due to the extent of fill and the size of embankments that would be required; and

WHEREAS, finally, while the Board acknowledges the Opposition’s other concerns regarding the proposal’s potential impact on neighboring properties, the Board finds that such considerations are both beyond the scope of its review in this case, and governed by other laws and regulations; and

Therefore it is Resolved that the instant appeal, seeking

a reversal of the Fire Department decision dated August 18, 2011, is hereby *granted; on condition* that construction will substantially conform to the drawing filed with the application marked “Received April 25, 2014 (1) sheet; and *on further condition*:

THAT all required CPC approvals will be obtained prior to the issuance of a building permit by DOB;

THAT the slope of the access road will not exceed 13.59 percent at any point;

THAT the access road will have a minimum width of 30 feet;

THAT a maximum of four homes will be permitted at the site;

THAT all homes will be fully-sprinklered;

THAT no street parking will be permitted along the access road and “No Parking” signs will be installed in accordance with the Fire Code;

THAT a minimum of two fire hydrants will be provided along the access road;

THAT the access road will be constructed using asphalt porous pavement or a similar system, as recommended by DOT, in order to maximize traction;

THAT DOT and DOB will review and approve a Builders Pavement Plan for the intersection of Harborlights Court and Howard Avenue;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed objection; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for adjourned hearing.

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80-11-A, 84-11-A & 85-11-A & 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district.

PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for adjourned hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for adjourned hearing.

43-14-A

APPLICANT – Rosan & Rosan, P.C., for Milburn Hotel, owner.

SUBJECT – Application March 14, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize 120 hotel units, as provided recent (2010) legislation under Chapters 225 and 566 of the Laws of New York. R8B zoning district.

PREMISES AFFECTED – 242 West 76th Street, south side of West 76th Street, 112' west of Broadway, between

Broadway and West End Avenue, Block 1167, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

130-13-BZ

APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 23, 2013, acting on Department of Buildings (“DOB”) Application No. 320698465, reads in pertinent part:

Proposed conversion to retail stores (UG 6) and alteration of existing one-story storage garage for more than five motor vehicles and motor vehicle repair shop limited to vehicles owned by tenant in an R6 zone previously approved by BSA under Cal. No. 863-50-BZ must be referred to BSA; and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval, and an amendment to allow a change in use from a public garage for vehicle storage and motor vehicle repair (Use Group 16) to retail stores (Use Group 6) and a warehouse (Use Group 16); and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with continued hearings on January 28, 2013, March 4, 2014 and April 1, 2014, and then

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to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is an irregular through-lot located on the block bounded by Albemarle Road, Nostrand Avenue, East 29th Street, and Tilden Avenue, within an R6 zoning district; and

WHEREAS, the site has approximately 101 feet of frontage along Albemarle Road, approximately 271 feet of frontage along Nostrand Avenue, approximately 195 feet of frontage along East 29th Street, and 46,665 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story storage and repair garage (Use Group 16) with 31,613 sq. ft. of floor area (0.68 FAR); and

WHEREAS, on February 14, 1951, under BSA Cal. No. 863-50-BZ, the Board granted a variance to permit, in a business use district, the extension of an existing public garage using more than the permitted area, to be used as a storage garage and motor vehicle repair shop for New York Telephone Company vehicles, for a term of 30 years, to expire on February 14, 1981; and

WHEREAS, on April 24, 1951, the grant was amended to permit relocation of accessory gasoline pumps; and

WHEREAS, the applicant notes that in 1971, New York Telephone Company acquired the lot on the northwest corner of Block 5131, demolished the residential buildings that occupied by the lot, and began using the lot for additional parking for the uses at the site; and

WHEREAS, the applicant now proposes to reinstate the variance granted under BSA Cal. No. 836-50-BZ to allow for the change of use to a series of Use Group 6 retail stores along Nostrand Avenue and a Use Group 16 warehouse along East 29th Street; in addition, the applicant proposes an accessory parking lot for 20 automobiles adjacent to the warehouse, an accessory parking lot for 15 automobiles at the corner of Albemarle Road and Nostrand Avenue, five accessory parking spaces within the warehouse (for employees), and new landscaping and street trees along the three frontages of the site; and

WHEREAS, as to the nearby lot incorporated into the site in 1971, it will be reapportioned as a separate tax lot and the site will be restored to the dimensions approved by the Board under the original grant; and

WHEREAS, pursuant to ZR § 11-411 and the Board's Rules of Practice and Procedure, the Board may extend the term of a pre-1961 grant that has been expired for more than ten years, provided that: (1) the use of the premises has been continuous since the expiration of the term; (2) substantial prejudice would result from the refusal to allow the extension; and (3) the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, the applicant submitted written

testimony and supporting documentation indicating that New York Telephone Company and its successor, Verizon, occupied the site continuously from the expiration of the term of the grant on February 14, 1981 through 2012; and

WHEREAS, as to substantial prejudice, the applicant asserts that it is not feasible to adapt the one-story storage facility and garage for a conforming use, necessitating complete demolition of the building, at significant cost; and

WHEREAS, as to whether the use authorized by the grant would impair the appropriate use and development of adjacent properties, the applicant contends that it would not and notes that Use Group 16 has existed at the site for nearly 65 years with no negative effects on the surrounding conforming uses; further, because a portion of the building will be converted to Use Group 6, the intensity of the non-conforming use at the site will be diminished; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use which would be permitted under one of the provisions applicable to non-conforming uses as set forth in ZR §§ 52-31 to 52-36; and

WHEREAS, the applicant represents that its request for a change in use from a Use Group 16 use to a Use Group 6 use is be permitted pursuant to ZR § 52-34 (*Commercial Uses in Residence Districts*), which allows for a change in use from Use Group 16 to Use Group 6; further, consistent with ZR § 11-413, the introduction of Use Group 6 will not alter the essential character of the neighborhood, in that it is a less intense use than the previously-approved Use Group 16 uses and it will be more compatible with the nearby conforming uses; further, there are commercial overlays on both sides of Nostrand Avenue less than one block south of the site; and

WHEREAS, at hearing, the Board directed the applicant to study the effects of the proposal on parking in the surrounding community; and

WHEREAS, in response, the applicant conducted a parking demand study, an on-street parking survey, and a trip generation and parking accumulation analysis; based on the parking demand study, the proposal requires 35 parking spaces per day during the week and 36 parking spaces per day on the weekend, which are less than the 40 parking spaces to be provided at the site; and

WHEREAS, as to the on-street parking survey and the trip generation and parking accumulation analysis, according to the applicant, these studies indicate that, in the immediate vicinity, there is a minimum of 35 and a maximum of 85 hourly available parking spaces at any given time between 8:00 a.m. and 5:00 p.m. on a typical weekday, which, in addition to the proposed accessory parking for the site, will be more than sufficient to accommodate the parking demand generated by the proposal; and

WHEREAS, accordingly, the Board finds that there is ample parking for the proposed uses at the site; and

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WHEREAS, the Board also directed the applicant to redesign the proposal to eliminate the initially proposed overhang for parking at the front of the site; and

WHEREAS, in response, the applicant revised the plans to reflect the elimination of the covered parking area; and

WHEREAS, based on the foregoing, the Board is persuaded that the proposal will neither alter the essential character of the neighborhood, nor impair the appropriate use and development of adjacent properties; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and a 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 *waives* the Rules of Practice and Procedures, issues a Type II under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, as amended, and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval of a public garage for vehicle storage and repair (Use Group 16) to retail stores (Use Group 6) and a warehouse (Use Group 16); *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received January 16, 2014"- (2) sheets and "February 23, 2014"- (1) sheet; and *on further condition*:

THAT the term of the variance will expire on April 29, 2024;

THAT the signage will comply with C1 zoning district regulations;

THAT no fewer than 40 parking spaces (20 spaces adjacent to the warehouse, 15 spaces at the corner of Albemarle Road and Nostrand Avenue, and five spaces within the warehouse) will be provided at the site;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all construction will be completed and a certificate of occupancy will be obtained by April 29, 2016;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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, April 29, 2014.

163-13-BZ

CEQR #13-BSA-146Q

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application May 30, 2013 – Special Permit (§73-44) to allow the reduction of parking spaces for the enlargement of a building containing Use Group 6 professional offices. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, 39th Avenue, east of College Pt. Boulevard, Block 4973, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 24, 2013, acting on Department of Buildings Application No. 420840914, reads in pertinent part:

Accessory parking spaces provided is less than required per ZR 36-21; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, on a site located within a C4-2 zoning district, a reduction in the required number of accessory parking spaces in connection with the enlargement of an existing office building (Use Group 6) from 28.75 spaces to 14.38 spaces, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in The City Record, with a continued hearing on April 8, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen M. Marshall recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 39th Avenue between College Point Boulevard and Prince Street, within a C4-2 zoning district; and

WHEREAS, the site has 28 feet of frontage along 39th Avenue and 3,740.5 sq. ft. of lot area; and

WHEREAS, the site is occupied by two two-story office buildings (Use Group 6) with a combined floor area of 3,785 sq. ft. (1.01 FAR); and

WHEREAS, pursuant to ZR § 36-21, Use Group 6 is in parking requirement category B1, which requires that one accessory parking space be provided for every 300 sq. ft. of floor area; thus, the existing Use Group 6 floor area at

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the site generates 12.6 required accessory parking spaces; and

WHEREAS, pursuant to ZR § 36-231, within the subject C4-2 zoning district, because less than 15 parking spaces are required, they need not be provided (and were not, when the subject buildings were constructed in 1992); and

WHEREAS, the applicant now proposes to vertically and horizontally enlarge the buildings and combine them, which will result in an increase in floor area from 3,785 sq. ft. (1.0 FAR) to 8,627 sq. ft. (2.3 FAR) and an increase in the number of required accessory parking spaces from 12.6 parking spaces to 28.75 parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C4-2 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable Zoning Resolution provision, for Use Group 6 office use in the parking category B1; in the subject zoning districts, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 36-21 the total number of parking spaces that will be required in connection with the proposal is 28.75 spaces; thus, if the special permit is granted, only 14.38 parking spaces will be required; the applicant notes that because 14.38 is less than 15, it will seek approval from DOB to reduce the number of parking spaces provided at the site to zero, in accordance with ZR § 36-231; and

WHEREAS, the Board takes no position on whether the required parking may be waived entirely and relies on DOB to make such determination; and

WHEREAS, pursuant to ZR § 73-44, the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, as a demonstration of such good faith, the applicant submitted an affidavit from the owner of the site attesting to its intention to use the site as an office building; indeed, the contemplated renovations are being made to upgrade the facility in order to attract long-term Use Group 6 tenants; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, at hearing, the Board requested: (1) an analysis of the potential impact of the proposed reduction on the community in terms of available on-street parking;

and (2) clearer photographs of the site and the surrounding area; and

WHEREAS, in response, the applicant submitted a trip generation and parking accumulation analysis and on-street and off-street parking surveys, which together demonstrate that existing parking within one-quarter mile of the site is more than adequate to accommodate the anticipated increase in the demand for parking generated by the proposed enlargement (which the survey concluded would be ten spaces); and

WHEREAS, the applicant also notes that the site is well served by mass transit, in that it is one block from the entrance to the MTA 7 Subway Line, one block from the Flushing Main Street LIRR station, and within walking distance of City buses running along Roosevelt Avenue and Main Street; and

WHEREAS, based upon the above, the Board agrees that the accessory parking space needs of the site can be accommodated even with the parking reduction; and

WHEREAS, in addition, as requested, the applicant submitted photographs of the site and surrounding area; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 13-BSA-146Q, dated May 30, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative declaration prepared in accordance with Article 8 of the New York State

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Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to permit, on a site located within a C4-2 zoning district, a reduction in the required number of accessory parking spaces in connection with the enlargement of an existing office building (Use Group 6) from 28.75 spaces to 14.38 spaces, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received April 24, 2014" – (8) sheets, and on further condition:

THAT there will be no change in the use of the site without prior review and approval by the Board;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT DOB will confirm that the 14.38 accessory parking spaces authorized under this grant may be waived, in accordance with ZR §§ 36-31 and 36-231;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single-family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings ("DOB"), dated June 3, 2013, acting on DOB Application No. 320746234, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with continued hearings on March 11, 2014, and April 1, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has 80 feet of frontage along East 24th Street and 8,000 sq. ft. of lot area; and

WHEREAS, the site comprises two historically-separate lots (Lots 29 and 31), each with 40 feet of frontage along East 24th Street and 4,000 sq. ft. of lot area, which will be combined and be known as Lot 31; and

WHEREAS, the site is occupied by two single-family homes; the home on historic Lot 29 has 2,042 sq. ft. of floor area (0.51 FAR) and the home on historic Lot 31 has 2,029 sq. ft. of floor area (0.51 FAR); thus, the site has 4,071 sq. ft. of existing floor area (0.51); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to demolish the home on historic Lot 29 and increase the floor area of the

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home on historic Lot 31 from 2,042 sq. ft. (0.51 FAR) (as measured with respect to historic Lot 31) to 8,031 sq. ft. (1.0 FAR) (as measured with respect to the site); the maximum permitted floor area is 4,800 sq. ft. (0.6 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 142 percent (historic Lot 29) and 144 percent (historic Lot 31) to 47 percent (as measured with respect to the site); the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain and extend historic Lot 31's existing non-complying side yard width of 3'-11½" and reduce historic Lot 29's complying side yard width from 12'-0" to 8'-11½"; (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each); and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth to 20'-0"; historic Lot 29's rear yard depth was 27'-0" and historic Lot 31's rear yard depth was 26'-5½" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot width of 80 feet and 1.0 FAR are consistent with the bulk in the surrounding area; and

WHEREAS, as to the lot width, the applicant submitted a study, which reflects that, within the subject R2 zoning district, there are eleven lots that range in width from 60 to 100 feet; and

WHEREAS, as to the FAR, the applicant identified seven homes in the study area with FARs ranging from 1.0 to 1.63; the applicant notes that six of the seven homes were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the compatibility of the height of the proposed home with the existing homes along East 24th Street; and (2) the compliance of the proposal with the landscaping requirements; and

WHEREAS, in response, the applicant amended its plans to: (1) remove decorative grillework from the top of the building; (2) reduce the proposed building height from 38'-0" to 36'-0" and the proposed perimeter wall height from 25'-0" to 24'-8"; and (3) decrease the size of the front porch in order to accommodate required landscaping; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 19, 2014"-(13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 8,031 sq. ft. (1.0 FAR), a minimum open space ratio of 47 percent, side yards with minimum widths of 3'-11½" and 8'-11½", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

246-13-BZ

CEQR #14-BSA-025K

APPLICANT – Rothkurg Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings (“DOB”), dated July 22, 2013, acting on DOB Application No. 320590339, reads in pertinent part:

1. Floor area in R6B lot portion exceeds the maximum permitted; contrary to ZR 24-11;
2. Enlargement in the required rear yard is not permitted; contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the horizontal enlargement of the basement and first story of a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) that exceeds the maximum permitted floor area ratio (“FAR”) and does not provide the minimum required rear yard in the R6B portion of the site, contrary to ZR §§ 24-11 and 24-36; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this application is brought on behalf of Lutheran HealthCare, a not-for-profit institution; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a rectangular interior lot located on the south side of 49th Street between Fifth Avenue and Sixth Avenue, partially within an R6B zoning district and partially within a C4-3A zoning district; and

WHEREAS, the site has 191 feet of frontage along 49th Street, a lot depth of 100.17 feet, and a lot area of 19,131 sq. ft.; and

WHEREAS, the site is divided by a zoning district boundary, with the westernmost ten feet of the site for its full depth is located within a C4-3 zoning district and the remainder of the lot located within an R6B zoning district; and

WHEREAS, the site is occupied by a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) with 35,378 sq. ft. of floor area (1.8 FAR); the facility is operated by Lutheran HealthCare (“LHC”) and known as the Sunset Terrace Family Health Center (“STFHC”); and

WHEREAS, the applicant notes that the facility was completed in 1960 and underwent its only major renovation in 1977; and

WHEREAS, the applicant proposes to enlarge the basement and first story at the rear of the building, which will increase the floor area from 35,378 sq. ft. (1.8 FAR) to 40,912 sq. ft. (2.14 FAR); and

WHEREAS, the applicant states that the basement enlargement will comprise 2,637 sq. ft. of floor area and provide space for offices, staff room, storage and mechanical equipment; the first story enlargement will comprise 2,997 sq. ft. of floor area and will provide space for examination rooms, additional offices, work stations, and restrooms; and

WHEREAS, the applicant states that a variance is requested because the proposed enlargement will exceed the maximum permitted floor area for the site (39,263 sq. ft. (2.05 FAR)) and will extend the existing non-complying rear yard depth of 11 feet for the full width of the building; and

WHEREAS, the applicant notes that LHC, which operates STFHC, has served the ethnically diverse, medically underserved neighborhoods of central and southwest Brooklyn for more than 40 years, and that the official LHC service area includes approximately 700,000 residents (28 percent of the total Brooklyn population); and

WHEREAS, the applicant states that STFHC is facing a large influx of patients due to three factors: (1) the closure or threatened closure of nearby health systems and hospitals, such as Long Island Hospital, Brookdale Hospital, and Interfaith Medical Center; (2) the initiation of the New York Health Home system (under the requirements of the New York State Medicaid Redesign Team), which requires coordination of mental illness treatment with medical treatment; and (3) the implementation of family homeless services; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which, in accordance with ZR § 72-21(a), create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of community facility use at the site and obsolescence of the building at the site for such use (including the outmoded configuration of its floorplates); and (2) the programmatic needs of LHC; and

WHEREAS, as noted above, the applicant states that LHC has been providing health services at the site for decades in a building that was constructed in 1960; as such, community facility use at the site is well-established; and

WHEREAS, the applicant notes that the building was constructed without a cellar; therefore, it must use above-grade spaces for common below-grade uses such a storage of materials and mechanical equipment; and

WHEREAS, in addition, the applicant states that the building was last renovated in 1977 and its layouts include redundancies and inefficiencies (such as a single entrance for all patients), which interfere with LHC’s ability to provide quality health care; and

WHEREAS, the applicant states that the building must expand to satisfy LHC’s programmatic needs, including providing: (1) proper separation of offices, storage space, and staff rooms from patient services; (2) expansion of the primary care areas; (3) establishment of dental care program space; (4) expansion of behavioral health patient areas; (5) separation of patients by health care need; and (6) for the

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elimination of the joint reception area, which is undesirable given the diversity of the services offered by LHC; and

WHEREAS, the applicant also states that remaining in the building is critical to the care STFHC provides to the surrounding community because many of its patients live nearby and cannot travel long distances for services; and

WHEREAS, the applicant contends that providing some services at the site and others offsite would substantially interfere with patient care, require duplication of non-patient spaces, services, and staff, and be inconsistent with the recommendations of the New York State Medicaid Redesign Team; and

WHEREAS, similarly, the applicant represents that relocating the facility entirely is not possible because there are no comparable buildings or sites within Sunset Park and that the vast majority of lots in the area (both vacant and occupied) have lot areas of approximately 2,000 sq. ft.—well below the size that would be needed to accommodate a suitable building for STFHC; and

WHEREAS, the applicant explored the feasibility of the following as-of-right development scenarios: (1) a three-story rear enlargement for a depth of 14 feet (“Scenario 1”); (2) a four-story enlargement to the west side of the building (“Scenario 2”); and (3) a complete renovation of the entire building, including significant demolition and reconstruction (“Scenario 3”); and

WHEREAS, the applicant states that Scenario 1 would not allow for the additional examination rooms and corridors due to its limited depth and it would not alleviate the entrance bottleneck caused by the single patient entrance; in addition, it would require the placement of medical examination and dental examination rooms on separate levels and would prevent the consolidation of staff spaces and instead separate such spaces by several stories with only one elevator connecting them; and

WHEREAS, the applicant states that Scenario 2 would result in approximately 60 percent less new program space than the proposal, resulting in a reduction and/or elimination of programs and funding; further, Scenario 2 would require reconfiguration of the boiler room, relocation of an egress stair, and the installation of a new sprinkler system, at significant cost; and

WHEREAS, as for Scenario 3, the applicant represents that it is not viable due to the costs involved and the significant disruptions in patient care; and

WHEREAS, accordingly, the applicant asserts that the building’s inefficiencies and LHC’s programmatic needs are best addressed with the proposed horizontal enlargement; and

WHEREAS, based upon the above, the Board finds that the history of community facility use at the site and the obsolescence of the building, when considered in conjunction with the programmatic needs of LHC, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since LHC is a non-profit institution and

the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the neighborhood is characterized by a mix of low- to medium-density residential, community facility, and, where permitted, commercial uses; and

WHEREAS, the applicant states that the site has been occupied by a medical facility for more than 50 years, that Use Group 4 is permitted as-of-right in the subject zoning districts (R6B and C4-3A), and that the operator of the facility is an organization with significant ties to the community; and

WHEREAS, as to adjacent properties, the applicant states that there are mixed residential and commercial buildings along Fifth Avenue to the west of the site, and residential buildings to the north, east, and south of the site; and

WHEREAS, the applicant states that the proposed enlargement is a continuation of the building’s existing, non-complying rear yard depth of 11 feet and that its impact upon the residences to the south is mitigated by the fact that those buildings provide complying rear yards with depths of 30 feet and are separated from the site by a retaining wall and a fence; and

WHEREAS, as to the FAR waiver, the applicant asserts that while it is modest (the proposal seeks 0.09 FAR greater than is permitted at the site), a noted above, the additional floor area is essential to LHC’s ability to carry out its programmatic needs; further, the additional floor area will be located entirely within the rear of the site, will have no impact on the building’s overall height, number of stories or appearance from the street, and is within the ten-percent increase in floor area permitted by special permit under ZR § 73-63 (*Enlargement of Non-Residential Buildings*); and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of LHC could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that, per ZR § 72-21(d) the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board also finds that the requested relief is the minimum necessary, in accordance with ZR § 72-21(e); and

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WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-025K, dated August 14, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the horizontal enlargement of the basement and first story of a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) that exceeds the maximum permitted floor area ratio ("FAR") and does not provide the minimum required rear yard in the R6B portion of the site, contrary to ZR §§ 24-11 and 24-36; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 26, 2013" –(5) sheets; and *on further condition;*

THAT the following shall be the bulk parameters of the building: a maximum of 40,912 sq. ft. (2.14 FAR) and a minimum rear yard depth of 11'-0", as indicated on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

270-13-BZ

APPLICANT – Eric Palatnik, P.C., for Margaret Angel, LLC, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 288 Dover Street, Dover Street, south of Oriental Boulevard, Block 8417, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings ("DOB"), dated November 15, 2013, acting on DOB Application No. 320846028, reads in pertinent part:

Proposed floor area ratio is contrary to Section 23-141(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the northwest corner of Dover Street and the Manhattan Beach Esplanade, within an R3-1 zoning district; and

WHEREAS, the site has 127 feet of frontage along Dover Street, 104 feet of frontage along the Manhattan Beach Esplanade, and 13,024 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a single-family home with 3,839 sq. ft. of floor area (0.3 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks an increase in the floor area from 3,839 sq. ft. (0.3 FAR) to 10,570 sq. ft. (0.81 FAR); the maximum permitted floor area is 7,814.4 sq. ft. (0.6 FAR); and

WHEREAS, the applicant states that the building will comply in all other respects with the R3-1 zoning district regulations; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed 0.81 FAR is consistent with the bulk in the surrounding area; in support of this assertion, the applicant submitted a study of the 59 homes within 400 feet of the site, which reflects that 12 homes have an FAR between 0.75 and 1.0; and

WHEREAS, at hearing, the Board directed the applicant to: (1) clarify the landscaping requirements along the Manhattan Beach Esplanade; and (2) remove the stairs encroaching upon the Manhattan Beach Esplanade; and

WHEREAS, in response, the applicant submitted: (1) a letter from its architect stating that the Manhattan Beach Esplanade is treated as a "street" for the purposes of calculating the required landscaping and number of street trees; and (2) an amended plan omitting the stairs from the original proposal; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR contrary to ZR § 23-141; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 11, 2014" – (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: two stories, a maximum floor area of 10,570 sq. ft. (0.81 FAR), a maximum lot coverage of 33.4 percent, side yards with minimum widths of 26'-9" and 8'-

2", a maximum perimeter wall height of 21'-0", and a maximum building height of 34'-1", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

285-13-BZ CEQR #14-BSA-055K

APPLICANT – Warshaw Burstein, LLP, for 495 Flatbush Ave, LLC, owner; 495 Flatbush Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). C8-6 zoning district.

PREMISES AFFECTED – 495 Flatbush Avenue, east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings ("DOB"), dated September 12, 2013, acting on DOB Application No. 320787314, reads, in pertinent part:

ZR 32-10 - physical culture establishment is not permitted as-of-right in a C8 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-2 zoning district, the operation of a physical culture establishment ("PCE") on portions of the first and second stories of a three-story mixed commercial and community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in the *City Record*, and then to decision on April 29, 2014;

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and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Flatbush Avenue, between Empire Boulevard and Lefferts Avenue, within a C8-2 zoning district; and

WHEREAS, the site has approximately 213 feet of frontage along Flatbush Avenue, approximately 234 feet of frontage along Washington Avenue, and 44,413 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story mixed commercial and community facility building with approximately 78,795 sq. ft. of floor area (1.75 FAR); and

WHEREAS, the proposed PCE will occupy 2,000 sq. ft. of floor area on the first story and approximately 17,080 sq. ft. of floor area on the second story, for a total PCE floor area of approximately 19,080 sq. ft.; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the proposed signage is in accordance with the C8-2 district regulations; and

WHEREAS, in response, the applicant provided a zoning analysis confirming that the proposed signage complies; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No.14BSA055K dated October 8, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a three-story mixed commercial and community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 12, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 29, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

302-13-BZ

CEQR #14-BSA-008M

APPLICANT – Francis R. Angelino, Esq., for Claret Commons Condominium, owner; Peloton, lessee.

SUBJECT – Application November 15, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Peloton Fitness*). C6-3X zoning district.

PREMISES AFFECTED – 140 West 23rd Street, S/S West 23rd Street between 6th and 7th Avenues. Block 798, Lot 7503. Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Director of the Development HUB of the Department of Buildings (“DOB”), dated November 8, 2013, acting on DOB Application No. 121236996, reads, in pertinent part:

Proposed use as a physical culture establishment is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3X zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a six-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of the application; and

WHEREAS, a resident of the subject building testified in opposition to the application, citing concerns about noise emanating from air conditioning units that service the

commercial space; and

WHEREAS, the subject site is located on the east side of south side of West 23rd Street, between Avenue of the Americas and Seventh Avenue, within a C6-3X zoning district; and

WHEREAS, the site has approximately 63 feet of frontage along West 23rd Street and 6,169 sq. ft. of lot area; and

WHEREAS, the site is occupied by a six-story mixed residential and commercial building with 20 dwelling units; and

WHEREAS, the proposed PCE will occupy 3,142 sq. ft. of floor space in the cellar and approximately 4,899 sq. ft. of floor area on the first story, for a total PCE size of approximately 8,041 sq. ft.; and

WHEREAS, the PCE will be operated as Peloton Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; no massage services will be provided at the PCE; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 10:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to include additional details on its plans regarding its proposed sound-attenuation measures for the external HVAC units and for the PCE (the “box within a box” construction); and

WHEREAS, in response, the applicant submitted amended plans that detail the proposed sound-attenuation measures; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted

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action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA008M dated November 8, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a three-story mixed commercial and community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 25, 2014” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 29, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT the hours of operation for the PCE will be limited to Monday through Friday, from 5:30 a.m. to 10:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

54-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

211-12-BZ

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for deferred decision.

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to June 24,

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2014, at 10 A.M., for continued hearing.

277-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner.

SUBJECT – Application September 14, 2014 – Special Permit (§73-49) to allow 130 parking spaces on the roof of an accessory parking structure. M1-1 zoning district.

PREMISES AFFECTED – 1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Road, Block 4226, Lot 16, Borough of Bronx.

COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

311-12-BZ

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

347-12-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, Mitchell S. Ross, Esq., for X & Y Development Group, LLC., owner.

SUBJECT – Application December 26, 2012 – Variance (§72-21) to permit a transient hotel and community facility use (*North Queens Medical Center*), contrary to use regulations (§22-10), and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport.. R7-1 (C1-2) zoning district.

PREMISES AFFECTED – 42-31 Union Street, east side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11, 14, 15, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for adjourned hearing.

2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.

SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for continued hearing.

213-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

216-13-BZ & 217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk

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Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for adjourned hearing.

228-13-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

251-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hutch Realty Partners, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-49) to allow 109 parking spaces on the roof of an accessory parking structure. M1-1 zoning.

PREMISES AFFECTED – 1240 Waters Place, east side of Marconi Street, approximately 1678 ft. north of intersection of Waters Place and Marconi Street, Block 4226, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

252-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eli Schron, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, east side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

253-13-BZ

APPLICANT – Eric Palatnik, P.C., for Miyer Yusupov, owner.

SUBJECT – Application August 30, 2013 – Special Permit (§73-621) for the enlargement of an existing two-story, two-family home, contrary to floor area (§23-141B) regulations. R4B zoning district.

PREMISES AFFECTED – 66-31 Booth Street, north side of Booth Street between 66th and 67th Avenue, Block 3158, Lot 96, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

275-13-BZ

APPLICANT – Warshaw Burstein, LLP, for KedzKidz Realty LLC., owner; Antonaccio-Crous, LLC, lessee.

SUBJECT – Application September 26, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Bikram Yoga Soho*). M1-5 zoning district.

PREMISES AFFECTED – 404-406 Broadway, east side of Broadway south of its intersection with Canal Street in TriBeCa, Block 196, Lot 3. Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

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319-13-BZ

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the minimum parking requirements (§25-23) to permit the construction of a new, 682 unit, 32-story mixed used building. 123 parking spaces are proposed. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

325-13-BZ

APPLICANT – Eric Palatnik, P.C., for 3170 Webster Avenue LLC, owner; CT Norwood LLC, lessee.

SUBJECT – Application December 23, 2013 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (*Crunch Fitness*) within a portions of a commercial building. C2-4/R7D zoning district.

PREMISES AFFECTED – 3170 Webster Avenue, East side of Webster Avenue at intersection with East 205th Street. Block 3357, Lot 37, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

1-14-BZ

APPLICANT – Law Office of Fredrick A Becker, for CPT 520 W 43 Owner LLC c/o Rose Associates, owner; Ewing Massage Entprise, LLC dba Massage Envoy, lessee.

SUBJECT – Application January 6, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Massage Envy*). C6-4 zoning district.

PREMISES AFFECTED – 525 West 42nd Street, Northerly side of West 42nd Street 325 feet easterly of Tenth Avenue. Block 1071, Lot 42. Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

2-14-BZ

APPLICANT – Law Office of Fredrick A.Becker, for SP101 W 15 LLC, owner; BFX West 15th Street LLC dba BFX Studio, lessee.

SUBJECT – Application January 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*BFX Studio*). C6-2A/R8B zoning district. PREMISES AFFECTED – 555 6th Avenue, Westerly side of 6th Avenue between West 15th Street and West 16th Street, Block 79, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

4-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TrizecHahn, 1065 Ave. of the Americas LLC, owner; Blink 1065 6th Ave., Ink., lessee.

SUBJECT – Application January 9, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within portions of an existing commercial building. C5-3(mid)(T) zoning district.

PREMISES AFFECTED – 1065 Avenue of The Americas, aka 111 West 40th Street, 112 West 41st Street. NWC of Avenue of the Americas and West 40th Street. Block 993, Lot 29. Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

The resolution adopted on November 27, 2012, under Calendar No. 5-11-BZ and printed in Volume 97, Bulletin No. 49, is hereby corrected to read as follows:

5-11-BZ

CEQR #11-BSA-052K

APPLICANT – Akerman Senterfitt, LLP, for Dumbo Development, LLC, owner.

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a new five-story residential development, contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 13, 2011, acting on Department of Buildings Application No. 320146445, reads, in pertinent part:

BSA Special Permit required for residential use in an M2-1 manufacturing district as per ZR 42-10;

and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M2-1 zoning district within the Fulton Ferry Historic District, the construction of a five-story mixed-use residential/commercial building with ground floor retail use and residential use above, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on November 27, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member Stephen T. Levin recommends approval of this application; and

WHEREAS, a member of the community provided testimony in opposition to the application (the “Opposition”), citing concerns with the proposed height of the building; and

WHEREAS, the site is located on the north side of Old Fulton Street, between Front Street and Water Street, in an M2-1 zoning district within the Fulton Ferry Historic District; and

WHEREAS, the site has 22’-8” of frontage along Old Fulton Street, a depth ranging between 60’-11” and 61’-10”, and a total lot area of 1,396 sq. ft.; and

WHEREAS, the site is currently vacant with the exception of an unoccupied one-story 660 sq. ft. building formerly utilized as an accessory kitchen for the adjacent building at 7 Old Fulton Street; and

WHEREAS, the applicant proposes to demolish the existing building and construct a five-story mixed-use residential/commercial building with ground floor retail and three dwelling units above; and

WHEREAS, the proposed building will have a total floor area of 4,575 sq. ft. (3.28 FAR), a residential floor area of 3,320 sq. ft. (2.38 FAR), a commercial floor area of 1,255 sq. ft. (0.90 FAR), a rear yard with a minimum depth of 16’-0”, and a total building height of 52’-0”; and

WHEREAS, the cellar level will be occupied by commercial storage and mechanicals; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance; and

WHEREAS, the second and third floors will be occupied by one residential unit each, and the fourth floor and fifth floor will be occupied by a single residential duplex unit with access to outdoor space on the fifth floor; and

WHEREAS, because residential use is not permitted in an M2-1 zoning district, the applicant seeks the subject use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: the subject lot is undersized, with both a narrow width and shallow depth; and

WHEREAS, as to the depth, the applicant states that the site has an irregular and shallow depth ranging between 60’-11” deep on the westerly side and 61’-10” deep on the easterly side, and is considered a shallow interior lot pursuant to ZR § 23-52; and

WHEREAS, the applicant represents that the shallow depth of the site would result in a building with a depth of only approximately 40 feet if an M2-1 compliant rear yard were provided, which, in conjunction with the narrow width of the site of 22’-8”, would result in an inefficient floor plate for the building; and

WHEREAS, the applicant further represents that the size and configuration of the zoning lot is not appropriate for conforming manufacturing or industrial use; and

WHEREAS, specifically, the applicant states that the narrowness and shallowness of the lot precludes the provision of off-street loading docks, freight elevators, and other requirements of a modern manufacturing or industrial use; and

WHEREAS, as to the uniqueness of the site, the

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applicant submitted a 400-ft. radius diagram which reflects that the subject site is the smallest vacant lot in the surrounding area;

WHEREAS, the applicant represents that the two most similarly dimensioned zoning lots on the subject block are Lots 11 and 9, which are immediately adjacent to the subject site, and both of which are occupied by four-story mixed-use buildings almost identical in both appearance and bulk to the proposed building; and

WHEREAS, the applicant further represents that the only other interior zoning lots with comparable shallowness are located across Old Fulton Street on Block 200 (Lots 11, 15, and 17), all of which are occupied by one- or two-story dwellings, which are scaled appropriately to the very narrow side streets (Everit Street and Doughty Street) upon which they front; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as-of-right two-story commercial building with a total floor area of 2,782 sq. ft. (1.99 FAR), and the proposed five-story mixed-use residential/commercial building with ground floor retail use and residential use above; and

WHEREAS, the feasibility study concluded that the as-of-right commercial building would not result in a reasonable return, but that the proposed building would result in a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of three dwelling units and ground floor retail will not impact any nearby conforming uses; and

WHEREAS, further, the applicant represents that the area now known as the Fulton Ferry Historic District was characterized by residential use until the Brooklyn Bridge

was built; and

WHEREAS, specifically, the applicant represents that the row of buildings on Old Fulton Street, from numbers 7 through 23 were all designed for commercial use on the ground floor and residential use on the floors above at about the same time; the applicant represents that many of them have continually been used for those purposes; and

WHEREAS, additionally, across the street from the site is a large nine-story building occupied by residential use; and

WHEREAS, at hearing, the Board raised concerns about the appropriateness of the proposed rear yard depth of 16'-0" and the partial fifth floor; and

WHEREAS, in response, the applicant states that, although there are not zoning regulations pertaining to minimum rear yards for residential buildings in manufacturing districts, the rear yard depth was calculated starting with the standard 20'-0" rear yard for an M2-1 zoning district and deducting one-inch for every two inches for which the shallow interior lot is less than 70'-0" in depth, in accordance with ZR § 43-27, which results in the proposed rear yard depth of 16'-0"; thus, the proposed rear yard depth would be in compliance with the Zoning Resolution if the underlying M2-1 district regulations were applicable; and

WHEREAS, the applicant further states that the proposed rear yard depth of 16'-0" is more than the existing rear yards at the adjacent buildings located at 7 and 11 Old Fulton Street, which have rear yard depths of 12'-4" and 14'-5", respectively; and

WHEREAS, as to the appropriateness of the partial fifth floor, the applicant submitted a copy of the Landmarks Preservation Commission ("LPC") plans and Certificate of Appropriateness for the neighboring buildings to the east, at 11, 13, and 15 Old Fulton Street, each of which were approved with similar partial fifth floors and range in total height from 51'-7" to 52'-11", and were permitted pursuant to a previous variance granted by the Board under BSA Cal. No. 136-06-BZ; and

WHEREAS, the applicant states that the proposed building, with a total height of 50'-4", therefore fits within the character of the surrounding area; and

WHEREAS, as to the Opposition's concerns that the proposed building could have a negative effect on the light and air of their building at 4 Water Street and should be limited to four stories in height, the applicant notes that the certificate of occupancy for 4 Water Street, located to the northeast of the site, shows that it is a six-story building with a total height of 76'-0"; and

WHEREAS, additionally, the applicant represents that the partial-fifth floor will be setback above the fourth floor so as to minimize its visibility from the street; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from LPC approving the work associated with the proposed construction, dated October 19, 2012; and

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WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board observes that the proposed building of three dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA052K dated November 26, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP reviewed and accepted the February 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; 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 Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with

Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M2-1 zoning district within the Fulton Ferry Historic District, the construction of a five-story mixed-use residential/commercial building with ground floor retail use and residential use above, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 26, 2012" – seven (7) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: five stories; a total floor area of 4,575 sq. ft. (3.28 FAR); a residential floor area of 3,320 sq. ft. (2.38 FAR); a commercial floor area of 1,255 sq. ft. (0.90 FAR); a rear yard with a minimum depth of 16'-0"; and a total building height of 52'-0", as illustrated on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT DOB shall not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23;

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 27, 2012.

The resolution has been amended to correct the Building Height which read: "...height of 50'-4"...". Now reads: "...height of 52'-0"...". Corrected in Bulletin Nos. 16-18, Vol. 99, dated May 8, 2014.

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*CORRECTION

The resolution adopted on April 1, 2014, under Calendar No. 94-13-BZ and printed in Volume 99, Bulletin No. 14, is hereby corrected to read as follows:

94-13-BZ

CEQR #13-BSA-115Q

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40th Avenue aka 38-78 12th Street, Block 473, Lot 473, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 28, 2013, acting on Department of Buildings Application No. 420812632, reads in pertinent part:

Daycare is classified under UG 3 by Department’s Memo July 6, 1976 [and therefore] is not permitted in M1-3 district as per ZR 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-3 zoning district, the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013 and February 25, 2014, and then to decision on April 1, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of 40th Avenue and 12th Street, within an M1-3 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 548, 618, 619, and 621, has a lot area of approximately 16,139 sq. ft., 200 feet of frontage along 12th Street, and 74.34 feet of frontage along 40th Avenue; and

WHEREAS, the applicant represents that Lot 548 is currently occupied by a one-story and basement commercial

building with 14,947 sq. ft. of floor area (0.93 FAR); Lots 618, 619, and 621 are currently a parking lot; and

WHEREAS, the applicant proposes to renovate the first story of the building to allow a Use Group 3 daycare (“the School”) with approximately 7,473 sq. ft. of floor area (0.46 FAR), and utilize Lots 618, 619, and 621 for accessory off-street parking and a play area; the applicant notes that the basement will not be altered under the subject application and will remain Use Group 6 (offices); and

WHEREAS, the applicant states that the renovated building will serve an estimated 117 children ranging in age from two to five years and approximately 25 employees, and provide related sanitary facilities and administrative offices; and

WHEREAS, the applicant states that the School will be in compliance with the New York Health Code on Child Care Services and will operate from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant states that the School requires a minimum of 7,500 sq. ft. in order to carry out its program (child care for 117 students) in accordance with the New York Health Code; and

WHEREAS, in addition, the applicant represents that its students are drawn from primarily within a half-mile radius of the site; and

WHEREAS, finally, the applicant notes that the owner will be directly involved in the management of the School, in order to minimize costs and to ensure ongoing compliance with the rules and regulations governing the operation of the School; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-3 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that it conducted a search of nearby residence and commercial districts with the following site criteria: (1) a minimum of 7,500 sq. ft. of program space in order to accommodate the School’s 117 students in accordance with the New York Health Code; (2) parking and recreation space; (3) minimal construction costs; (4) proximity to the neighborhood surrounding the site; and (5) proximity to public transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of five buildings within the area and on sites where Use Group 3 is permitted as-of-right: 34-19 Tenth Street; 34-51 Vernon Boulevard; 30-01 Northern Boulevard; 65-35 Queens Boulevard; and 45-02 Skillman Avenue; and

WHEREAS, the applicant represents that each building was unsuitable for the School, in that: 34-19

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Tenth Avenue was not in close proximity to public transportation and its space was not suitable for children and would have required extensive renovations, including the installation of an elevator; 34-51 Vernon Boulevard had only 6,500 sq. ft. of usable space and no on-site parking area; 30-01 Northern Boulevard had only 5,000 sq. ft. of usable space, would have required extensive renovations, had neither on-site recreation space, nor a nearby park; 65-35 Queens Boulevard had less than the required amount of usable space and is already occupied by a child care center on the second story; and 45-02 Skillman Avenue had only 3,000 sq. ft. of usable space; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located approximately 200 feet from an R6 zoning district, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that an ambient noise survey was conducted at the site, which indicated that the predominant noise source in the area is vehicular traffic, which according to the survey conducted during peak, weekday travel periods, averaged 27 dB(A); and

WHEREAS, the applicant notes that 27 dB(A) is well below the 45 dB(A) that is considered acceptable according to the CEQR Technical Manual, and that such low noise level within the building is owing to the fact that it was built with sound-attenuating exterior wall and window construction; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's use will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-3 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the majority of students will be dropped off by parents commuting on the subway (F train), which is located less than two blocks from

the site; and

WHEREAS, as for vehicular traffic, the applicant states that, based on its assessment of existing traffic conditions in the vicinity, the School can operate safely without significant impacts; and

WHEREAS, in particular, the applicant states that students will enter and exit the building via an entrance on 12th Street, which the applicant notes is not a primary thoroughfare based on its study of traffic patterns; in addition, a four-way stop sign and pedestrian lanes have been installed at the intersection of 12th Street and 40th Avenue; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, the applicant represents that, to the extent deemed appropriate by DOT, it will install additional signage, "School Crossing" pavement markings, and crossing guards in the vicinity; and

WHEREAS, by letter dated April 8, 2013, DOT states that it has no objection to the proposed construction and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. No. 13BSA115Q, dated May 23, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services;

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Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2013 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's March 2014 Air Quality Impact Assessment and determined that no significant air quality impacts to the proposed project are anticipated; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, on a site within an M1-3 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 20, 2013" – (2) sheets and "May 24, 2013"-(4) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT any change in the operator of the school requires review and approval by the Board;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 1, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 16-18, Vol. 99, dated May 8, 2014.

MINUTES

*CORRECTION

The resolution adopted on March 25, 2014, under Calendar No. 157-13-BZ and printed in Volume 99, Bulletin Nos. 12-13, is hereby corrected to read as follows:

157-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.

SUBJECT – Application May 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1368 & 1374 East 23rd Street, west side of East 23rd Street, 180' north of Avenue N, Block 7658, Lot 78 & 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated April 18, 2013, acting on DOB Application No. 320729208, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to ZR 23-461 in that the proposed enlargement increases the degree of non-compliance with respect to minimum required side yards;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 4, 2014, and then to decision on March 25, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site comprises Lots 78 and 80, which have a total lot area of 8,000 sq. ft.; Lot 78 is occupied by a single-family home with 2,044 sq. ft. of floor area (0.51 FAR); Lot 80 is also occupied by a single-family home; however, that home will be demolished to allow for the enlargement of the home on Lot 78; and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks an increase in the floor area from 2,044 sq. ft. (0.51 FAR, as calculated using only the lot area of Lot 78) to 8,179 sq. ft. (1.02 FAR, as calculated using the combined lot area of Lots 78 and 80); the maximum permitted floor area is 4,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks an open space ratio for the enlarged home of 52; the minimum required open space ratio is 150; and

WHEREAS, the applicant seeks to maintain and extend the building’s existing non-complying side yard width of 3’-8” and reduce its complying side yard width from 13’-10” to 13’-4”; (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each); and

WHEREAS, the applicant also seeks to decrease its complying rear yard depth from 30’-8½” to 20’-0”; a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that the proposed FAR is consistent with the bulk in the surrounding area and states that, based on its analysis of the lots within 400 feet of the site and with a minimum lot area of 8,000 sq. ft., there are 11 homes with an FAR in excess of 1.02; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a streetscape of the site and the nearby homes; (2) provide revised plans showing the extent of the foundation removal; and (3) reduce the proposed building height to be more consistent with the surrounding context; and

WHEREAS, in response, the applicant submitted: (1) a streetscape showing that the building is consistent with the surrounding buildings; and (2) revised plans showing the extent of the foundation removal and reflecting a reduction in building height from 41’-9” to 36’-0”; and

MINUTES

WHEREAS, based on its review of the streetscape and the revised drawings, the Board finds that the proposed bulk is compatible with the character of the neighborhood; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received February 19, 2014” – (13) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 8,179 sq. ft. (1.02 FAR), a building height of 36'-0"; a minimum open space ratio of 52, side yards with minimum widths of 13'-4" and 3'-8", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 25, 2014.

The resolution has been amended. Corrected in Bulletin Nos. 16-18, Vo. 99, dated May 8, 2014.

MINUTES

*CORRECTION

The resolution adopted on January 28, 2014, under Calendar No. 255-13-BZ and printed in Volume 99, Bulletin Nos. 4-5, is hereby corrected to read as follows:

255-13-BZ

CEQR #14-BSA-033X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 3560 WPR LLC & 3572 WPR LLC, owner; Blink Williamsbridge, Inc., lessee.

SUBJECT – Application September 5, 2013 – Special Permit (§73-36) to permit the operation of a physical culture (*Blink Fitness*) establishment within an existing commercial building. C2-4 (R7-A) zoning district.

PREMISES AFFECTED – 3560/84 White Plains Road, East side of White Plains Road at southeast corner of intersection of White Plains Road 213th Street. Block 4657, Lot(s) 94, 96. Borough of Queens.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 22, 2013, acting on Department of Buildings (“DOB”) Application No. 220324192, reads in pertinent part:

Proposed physical culture establishment in a C2-4 (R7A) district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-4 (R7A) zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first and second story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the subject site comprises adjacent tax lots (Lots 94 and 96) and spans the east side of White Plains Road between East 212th Street and East 213th

Street, within a C2-4 (R7A) zoning district; and

WHEREAS, the site has 71.34 feet of frontage along East 212th Street, 200.67 sq. ft. along White Plains Road, 55.19 feet of frontage along East 213th Street, and 12,350 sq. ft. of lot area; and

WHEREAS, the site is occupied by two two-story buildings, which are proposed to be combined into a single building; and

WHEREAS, the applicant states that the PCE is proposed to occupy a portion of the first story (3,962 sq. ft. of floor area) combined building and the entirety of the second story (11,942 sq. ft.), for a total PCE floor area of 15,904 sq. ft.; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Thursday, from 5:00 a.m. to 11:00 p.m., Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board requested clarification regarding whether windows at the rear of the building would be maintained and whether the existing parking at the site was required; and

WHEREAS, in response, the applicant indicated that the windows would be sealed prior to the occupancy of the PCE and that the parking was provided prior to 1961 and that, as such, it was not required; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Unlisted

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action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA033X, dated September 3, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C2-4 (R7A) zoning district, the operation of a PCE in portions of the first and second story of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 24, 2013” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 28, 2014.

The resolution has been amended to correct the DOB Application No. which read: “103703789”. Now reads: “220324192”. Corrected in Bulletin Nos. 16-18, Vol. 99, dated May 8, 2014.

BULLETIN

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Tuesday, May 6, 2014**

Morning Calendar365

Affecting Calendar Numbers:

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174-07-BZ	1935 Coney Island Avenue, Brooklyn
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DOCKETS

New Case Filed Up to May 6, 2014

89-14-A

215 East 64th Street, North side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot(s) 10, Borough of **Manhattan, Community Board: 8**. Extension of Time to obtain a Class B Certificate of Occupancy to legalize Affinia Gardens Hotel under MDL Section 120(b) (3) , as provided under recent amendments under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district. R8B district.

90-14-BZ

229-27 Merrick Boulevard, North West Corner of Merrick Boulevard and 230th Street, Block 12968, Lot(s) 116, Borough of **Queens, Community Board: 13**. Special Permit (§73-30) to install a proposed non-accessory radio facility (The Communication Facility,) on a portion of the property. Located within an R3-2/C1-3 zoning district. R3-2/C1-3 district.

91-14-BZ

3420 Bedford Avenue, Southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot(s) tent 45, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a single family residence. R2 zoning district. R2 district.

92-14-A

790 7th Avenue, Bounded by West 51st Street, Broadway, West 52nd Street and 7th Avenue, Block 1023, Lot(s) 29, Borough of **Manhattan, Community Board: 10**. Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements and legally required windows under MDL Sections 26 (7) & 30 for the construction of a residential addition to an existing building . C6-7.C6-6(MID) zoning district . C6-7/C6-6 MID district.

93-14-BZ

455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot(s) 6, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow a physical culture establishment (Title Boxing Club). R8A/C2-5 zoning district. R8A/C2-5 district.

95-14-A

237 East 72nd Street, North Side of East 72nd Street 192.6' West of 2nd Avenue, Block 1427, Lot(s) 116, Borough of **Manhattan, Community Board: 8**. MDL 171 &4.35 to allow for a partial one-story vertical enlargement (Penthouse) of the existing 3 story and basement building located on the site. Pursuant to the 310 MDL. R8 district.

94-14-BZ

1150 East 22nd Street, West side of East 22nd Street, 140 feet North of Avenue "K", Block 7603, Lot(s) 79, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-622) to allow the enlargement of an existing single family home for the cellar, 1st floor, 2nd floor and 3rd floor. Located in an R2 zoning district. R2 district.

96-14-BZ

290 Dyckman Street, Corner lot at the intersection of Dyckman Street and Henshaw Street, Block 2246, Lot(s) 28, Borough of **Manhattan, Community Board: 12**. Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. Located in an C8-3/R7-2 district. C8-3/R7-2 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

MAY 20, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 20, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

775-85-BZ

APPLICANT – Sheldon Lobel, P.C., for Ivy Cross Island Plaza, owner.

SUBJECT – Application December 18, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of a three-story office building contrary to permitted height and use regulation, which expired on February 24, 2012; Amendment to modify the parking layout, eliminate buffering and eliminate the term of years of the variance; Waiver of the Rules. C1-3/R2 and R2 zoning district.

PREMISES AFFECTED – 133-33 Brookville Boulevard, triangular lot with frontages on Brookville Boulevard, Merrick Boulevard, 133rd Avenue and 243rd Street, Block 12980, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

245-03-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for Allied Enterprises NY LLC, owner; McDonald's Real Estate Company, lessee.

SUBJECT – Application December 26, 2013 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (*McDonald's*), which expired on December 12, 2013. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

326-09-BZ

APPLICANT – Bryan Cave LLP, for Flushing Commons Property Owner LLC, owner.

SUBJECT – Application April 10, 2014 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-66) permitting the development of four mixed use buildings (*Flushing Commons*) which exceed the height regulations around airports, contrary to ZR (§61-21) which expires on July 27th 2014. C4-4 zoning district.

PREMISES AFFECTED – 37-10 Union Street aka 38-15 138th Street, portion of the block bounded by 37th Avenue on the north, 39th Avenue on the South, Union Street on the east and 138th Street on west, Block 4978, Lot 25, Borough of Queens.

COMMUNITY BOARD #7Q

49-11-BZ

APPLICANT – Warshaw Burstein, LLP, for A&G Real Estate, LLC, owner; Barry's Boot camp NYC, LLC, lessee. SUBJECT – Application February 21, 2014 – Amendment of a previously approved Special Permit (§73-36) which permitted the extension of physical culture establishment. C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, north side of West 20th Street between Sixth Avenue and Seventh Avenue, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

51-13-A

APPLICANT – Carl A. Sulfaro, for Woodward Avenue Realty, Inc., owner.

SUBJECT – Application January 29, 2013 – Proposed construction of a one story warehouse lying partially within the bed of mapped street. (*Metropolitan Avenue*) contrary to General City Law Section 35. M3-1 zoning district.

PREMISES AFFECTED – 10 Woodward Avenue, southwest corner of Metropolitan Avenue and Woodward Avenue, Block 3393, Lot 49, Borough of Queens.

COMMUNITY BOARD #5Q

59-13-A

APPLICANT – Carl A. Sulfaro, Esq., for Onofrio and Josephine Papia, owners.

SUBJECT – Application February 5, 2013 – Proposed construction of a new one family residence located in the bed of a mapped street contrary to Section 35 of the General City Law. R1-2 zoning district.

PREMISES AFFECTED – 11-30 143rd Place, west side of 143rd Place, 258.57' south of 11th Avenue, Block 4434, Lot 147, Borough of Queens.

COMMUNITY BOARD #7Q

CALENDAR

ZONING CALENDAR

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a now six story family dwelling contrary to §23-145 (maximum floor area). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

326-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 5225, LLC, owner.

SUBJECT – Application December 23, 2013 – Special Permit (§73-44) to reduce required off-street parking accessory to office building (UG 6) B-1 parking category. M1-1 (CP) zoning district.

PREMISES AFFECTED – 16-16 Whitestone Expressway, West Side of Whitestone Expressway (service road), 920.47 ft. north of 20th Avenue. Block 4148, Lot 50, 65. Borough of Queens.

COMMUNITY BOARD #7Q

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2013 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot 28, 30, 34, 40, 41, 42, 43. Borough of Brooklyn.

COMMUNITY BOARD #12BK

9-14-BZ

APPLICANT – Warsaw Burstein, LLP, for 177th Upper Broadway Holdings LLC, owner; 4168 Broadway Fitness Group LLC, lessee.

SUBJECT – Application January 17, 2014 – Special Permit (§73-36) & (§73-52) to allow the operation of a physical culture establishment fitness center (*Planet Fitness*) within the existing building and to permit the fitness center use to extend 25 feet into the R7-2 zoning district, contrary to §§32-10 & 22-10. C8-3 and R7-2 zoning district.

PREMISES AFFECTED – 4168 Broadway, southeast corner of the intersection formed by West 177th Street and Broadway, Block 2145, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #12M

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) proposed to add a third and fourth floor to an existing school building, contrary to §24-11 floor area and lot coverage, §24-521 maximum wall height, §24-35 side yard, §24-34 requires a 10' front yard and §24-361 rear yard of the zoning resolution. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4'E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

18-14-BZ

APPLICANT – Warsaw Burstein, LLP, for Infinity Fulton Street, LLC, owner; 1245 Fulton Fitness Group, LLC, lessee.

SUBJECT – Application January 29, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building. C4-5 zoning district.

PREMISES AFFECTED – 1245 Fulton Street, north side of Fulton Street between Bedford Avenue and Arlington Place, Block 1842, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #3BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 6, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

823-19-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Minzer, owner.

SUBJECT – Application April 20, 2012 – Amendment (§§ 11-412 and 11-413) of a previously approved variance which permitted a one story warehouse (UG 16). The application seeks to construct an as-of-right two-story community facility (UG 4) atop the warehouse and reduce the warehouse space to accommodate 13 required accessory parking spaces for the proposed community facility use. R5 zoning district.

PREMISES AFFECTED – 1901 10th Avenue, southeast corner of East 19th Street and 10th Avenue, Block 890, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, a change in use from a warehouse (Use Group 16) to accessory parking for a non-profit institution without sleeping accommodations (Use Group 4), and an amendment to permit a two-story enlargement of the building to accommodate a conforming use; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in the *City Record*, with continued hearings on March 25, 2014 and April 8, 2014, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commission Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located at the southeast corner of the intersection of 19th Street and Tenth Avenue,

within an R5 zoning district; and

WHEREAS, the site has 100.17 feet of frontage along Tenth Avenue, 150 feet of frontage along 19th Street, and 15,025.5 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story warehouse building (Use Group 16) with 15,025.5 sq. ft. of floor area (1.0 FAR), 100 percent lot coverage, and a wall and building height of 17'-5"; and

WHEREAS, the site has been subject to the Board's jurisdiction since April 6, 1920, when, under the subject calendar number, the Board permitted the construction of a garage for more than five motor vehicles located partially within a residence district and partially within a business district; and

WHEREAS, on October 17, 1933, the Board granted an amendment to permit the handling and sorting of parcels within the building and certain minor modifications to the layout of the building; and

WHEREAS, on November 18, 1958, the Board authorized a change in use from parking and parcel delivery station to a factory; in connection with the change of use, the Board also permitted vehicle entrance to the building within 25 feet of an intersection and within 75 feet of a residence district; the applicant notes that this change of use did not occur; and

WHEREAS, most recently, on November 27, 1962, the Board authorized a change in use from parking and parcel delivery station to a warehouse with incidental manufacturing and accessory office; and

WHEREAS, the applicant now proposes redevelopment of the warehouse building as follows: (1) a change in use of a portion of the first story of the building from warehouse (Use Group 16) to 13 accessory parking spaces for a non-profit institution without sleeping accommodations (Use Group 4); and (2) construction of a two-story enlargement to be occupied by the non-profit institution; and

WHEREAS, the applicant states that the enlargement will comply in all respects with the subject R5 zoning district regulations and will increase the floor area of the building from 15,025.5 sq. ft. (1.0 FAR) to 23,614.42 sq. ft. (1.57 FAR); the applicant notes that the floor area devoted to the non-conforming use within the building will be reduced from 15,025.5 sq. ft. to 8,261.8 sq. ft.; thus, under the proposal, the applicant seeks to add 15,352.6 sq. ft. of community facility floor area to the site, which is well below the maximum permitted community facility floor area permitted at the site (30,051 sq. ft. (2.0 FAR)); and

WHEREAS, pursuant to ZR § 11-412, the Board may permit enlargement of a building subject to a use variance issued prior to December 15, 1961, provided that such enlargement is limited to the zoning lot that was granted such variance; in addition, pursuant to ZR § 11-413, the

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Board may permit a change in use from a non-conforming use to a conforming use; and

WHEREAS, the applicant states, as noted above, that the proposal both reduces the amount of floor area devoted to a non-conforming use and complies in all respects with the applicable bulk regulations; and

WHEREAS, at hearing, the Board questioned the proposed configuration of the parking spaces within the building and the curb cuts at the site; and

WHEREAS, in response, the applicant submitted amended plans noting that the parking layout and curb cuts would be subject to Department of Buildings approval; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 11-412 and 11-413.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 6, 1920, to permit the noted change in use and enlargement; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received April 3, 2014'-(11) sheets; and *on further condition*:

THAT parking at the site will only be used in connection with the Use Group 4 uses at the site;

THAT a minimum of 13 parking spaces will be provided at the site;

THAT DOB will review and approve the proposed parking and curb cuts;

THAT all construction will be completed and a certificate of occupancy will be obtained by May 6, 2016;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

156-02-BZ

APPLICANT – Herrick Feinstein Lullaby Jennifer Dickson, for 8021 15th Avenue Corp., owner; JP Morgan Chase & Co., lessee.

SUBJECT – Application August 1, 2013 – Extension of Term (§11-411) of an approved variance which permitted a car sales lot with accessory office and parking, which expired on August 5, 2013: Amendment (§11-413) to permit change in use to an accessory parking lot to an existing bank. R5B zoning district.

PREMISES AFFECTED – 964 65th Street, between Fort Hamilton Parkway and Tenth Avenue. Block 5750, Lot 49 (Tent 51). Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and a change in use from an automobile sales lot and accessory office (Use Group 16) to an accessory parking lot (Use Group 6); and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in the *City Record*, with a continued hearing on March 25, 2014, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commission Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is an L-shaped lot located on 65th Street between Fort Hamilton Parkway and Tenth Avenue, within an R5B zoning district; and

WHEREAS, the site, which is vacant, has 80 feet of frontage along 65th Street and 8,400 sq. ft. of lot area; previously, the site was occupied by an accessory office building for an automobile sales business; and

WHEREAS, the site has been subject to the Board's jurisdiction since May 26, 1959, when under BSA Cal. No. 696-58-BZ, the Board legalized an existing automobile sales lot and accessory office, for a term of five years; the applicant notes that, historically, the site was operated in conjunction with an automobile sales business located on the adjacent site (Lot 49); and

WHEREAS, the grant was extended over the years, most recently on August 5, 2003, when, under the subject calendar number, the Board extended the term of the grant for ten years, to expire on August 5, 2013; and

WHEREAS, the applicant now proposes to extend the term of the variance for ten years and to construct a parking lot with 14 spaces on the site to be used in conjunction with the Use Group 6 office (Chase Bank) that now occupies Lot 49; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of a use variance and, where appropriate, include such conditions and safeguards as are necessary to minimize the adverse effects of the such use on the character of the neighborhood; and

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WHEREAS, pursuant to ZR § 11-413, the Board may permit a change in use from one non-conforming use to another non-conforming use which would be permitted under one of the provisions applicable to non-conforming uses as set forth in ZR §§ 52-31 to 52-36; and

WHEREAS, the applicant represents that its request for a change in use from a Use Group 16 use to a Use Group 6 use is consistent with ZR § 52-332(a) (*Change of Non-Conforming Use/Other buildings or structures in residence districts*), which allows for the conversion of non-conforming Use Group 16 to Use Group 6 use in residential zoning districts; and

WHEREAS, the applicant states that the proposed change in use will not impair the essential character or future use or development of the surrounding area, as a Use Group 16 use operated at the site (in conjunction with the adjacent site) for more than 50 years and an accessory parking lot for a bank represents a significantly less intense non-conforming use; and

WHEREAS, the applicant also states that while residences generally predominate in the surrounding area, directly across from the site along 65th Street is a large retail store (Rite Aid), and Fort Hamilton Parkway, which is approximately one hundred feet from the site, is a heavily-trafficked thoroughfare with many automobile-oriented businesses and a variety of commercial and community facility uses; and

WHEREAS, likewise, the applicant contends that the proposed parking lot reduces the impact of the bank (a conforming use) on neighboring residential uses by helping to ensure that bank customers do not circle the block or park along the residential streets; and

WHEREAS, finally, the applicant notes that extensive landscaping and fencing will screen the site from adjacent residential uses; and

WHEREAS, at hearing, the Board requested clarification regarding the following: (1) the material of the proposed fence; (2) the signage of the site; and (3) the use of the parking lot when the bank is closed; and

WHEREAS, in response, the applicant submitted an amended plan noting the material of the proposed fence (which is existing and will remain) and providing specific information regarding the proposed signage for the site, including signs stating that the parking lot is restricted to bank patrons; and

WHEREAS, as to the use of the parking lot when the bank is closed, the applicant states that four parking spaces will be available 24 hours (for ATM usage) and that a post-and-chain enclosure will restrict all other spaces; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 5, 2003, so that as amended the resolution reads: “to a change in use from an automobile sales lot and accessory office (Use Group 16) to an accessory parking lot (Use Group 6); *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received April 21, 2014’- (1) sheet; and *on further condition*:

THAT the site will be restricted to accessory parking for the bank use on Lot 49;

THAT in the event that the use on Lot 49 changes, continued use of the site for accessory parking will be subject to the approval of the Board;

THAT parking at the site will be limited to patrons of the bank during bank hours, except for four parking spaces, which may remain open 24 hours per day, in accordance with the BSA-approved plans;

THAT lighting will be directed away from the adjoining residential buildings;

THAT the signage and landscaping will be in accordance with the BSA-approved plans;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all construction will be completed and a certificate of occupancy will be obtained by May 6, 2015;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

192-96-BZ

APPLICANT – Sheldon Lobel, PC, for 1832 Realty LLC, owner.

SUBJECT – Application January 7, 2014 – Amendment of a previously approved variance (§72-21) which permitted a large retail store (UG 10) contrary to use regulations. The application seeks to eliminate the term, which expires on September 23, 2022. C1-2/R5 zoning district.

PREMISES AFFECTED – 1832 86th Street, aka 1854 86th Street; 1-29 Bay Street, 2-6 Bay 20th Street, located on the southwest side of 86th Street spanning the entire block frontage between Bay 19th St and Bay 20th Street. Block 6370, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #11BK

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THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of an approved Special Permit (§73-211) which permitted the reconstruction of an existing auto service station (UG 16B), which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.

SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.

PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for postponed hearing.

611-52-BZ

APPLICANT – Gerald J. Caliendo, for John Blumenfield - HL Dalis, Inc., owner.

SUBJECT – Application October 15, 2013 – Extension of Term (§11-411) of a previously approved variance permitting a one story warehouse building, which expired on May 5, 2013. R5 zoning district.

PREMISES AFFECTED – 35-35 24th Street, east side of 24th Street, 130.63 feet south from the intersection of 35th Avenue and 24th Street, Block 338, Lot 8, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for continued hearing.

322-05-BZ

APPLICANT – Eric Palatnik P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application March 7, 2014 – Extension of Time to Complete Construction for a previously granted variance (§72-21) for an enlargement of an existing two story home and the change in use to a community use facility (*Queens Jewish Community Council*), which expired on March 7, 2014. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

173-09-BZ

APPLICANT – Goldman Harris LLC, for 839-45 Realty LLC, owner; Ranco Capital LLC, lessee.

SUBJECT – Application March 25, 2014 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a four-story mixed use building, which expires on December 14, 2014. C8-2/M1-1 zoning district.

PREMISES AFFECTED – 839-845 Broadway aka 12-14 Park Street, southeast corner of Broadway and Park Street, Block 3134, Lots 5, 6, 10, 11, Borough of Brooklyn.

COMMUNITY BOARD #4BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application December 18, 2013 – Extension of time and complete construction and secure Certificates of Occupancy. R5D zoning district.

PREMISES AFFECTED – 69-17 38th Avenue aka 69-19 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a four-story residential building at the subject site; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 1, 2014, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of 38th Avenue between the Brooklyn-Queens Expressway and 69th Street; and

WHEREAS, the site is a triangular-shaped parcel with 50 feet of frontage on 38th Avenue and a total lot area of 3,673.8 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with one four-story residential building with eight dwelling units (the “Building”); and

WHEREAS, the applicant notes that it originally proposed two four-story buildings with four dwelling units in each building on separate tax lots (tentative lots 64 and 65); however, in 2011, the plans were revised to combine the buildings into a single building on a single tax lot (Lot 64) with the same envelope and the same number of dwelling units as originally proposed; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that New Building Permit Nos. 420370217-01-NB and 420370208-01-NB were issued on July 26, 2011 (the “New Building Permits”), authorizing construction of the Building in accordance with

the R6 zoning district regulations; and

WHEREAS, on July 28, 2011 (the “Enactment Date”), the City Council voted to adopt the Sunnyside-Woodside Rezoning, which rezoned the site to R5D; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5D zoning district regulations and foundations were not complete; and

WHEREAS, on December 13, 2011, under the subject calendar numbers, the Board adopted a resolution recognizing that a vested right to continue construction under the New Building Permits had accrued under the common law doctrine of vested rights, and the Board reinstated the New Building Permits for a term of two years, to expire on December 13, 2013; and

WHEREAS, the applicant notes that, due to the redesign discussed above, only New Building Permit No. 420370217-01-NB will remain active and has been amended to reflect the combined four-story building; and

WHEREAS, by letter dated May 5, 2014, the Department of Buildings (“DOB”) states that New Building Permit No. 420370217 was lawfully issued; and

WHEREAS, the applicant represents that, as of December 13, 2013, construction has not been completed and a certificate of occupancy has not been issued for the Building; and

WHEREAS, thus, the applicant now seeks an additional two-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant notes that, subsequent to the 2011 grant and prior to the December 13, 2013 expiration of the permits, the following work was performed: completion of the foundation; installation of concrete block walls up to the second story; and installation of some steel beams and girders to the second story, and

WHEREAS, the applicant states that, including \$93,000 in soft costs, it has expended a total of \$424,000 since the Board’s 2011 grant; and

WHEREAS, at hearing, the Board directed the applicant to clarify the status of open DOB and Environmental Control Board violations at the site; and

WHEREAS, in response, the applicant represented that the violations related to a Stop Work Order, which has since been rescinded; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 420370217-01-NB, as well as all related permits for various work types, either already issued

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or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on May 6, 2016.

Adopted by the Board of Standards and Appeals, May 6, 2014.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o Newcastle Realty Services, owner; TSI West 41 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of Buildings’ to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, May 6, 2014.

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings’ interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for adjourned hearing.

304-13-A

APPLICANT – Simons & Wright, for 517 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

PREMISES AFFECTED – 517-519 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for continued hearing.

312-13-A

APPLICANT – Simons & Wright, for Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

PREMISES AFFECTED – 521-525 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for continued hearing.

313-13-A

APPLICANT – Simons & Wright, for 531 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

PREMISES AFFECTED – 531 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

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ZONING CALENDAR

303-12-BZ

CEQR #13-BSA-037K

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 28, 2011, acting on Department of Buildings Application No. 220137233, reads, in pertinent part:

1. District boundary in rear lot line R Zone: 30' shall be provided within C Zone, contrary to ZR Section 33-292;
2. Height and setback and sky exposure plane (slope) is contrary to ZR Section 33-432;
3. Parking is contrary to ZR Section 36-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C8-1 zoning district, a three-story community facility building to be occupied as a house of worship (Use Group 4), which does not comply with distance from a district boundary, height and setback, sky-exposure plane, and parking regulations, and is contrary to ZR §§ 33-292, 33-432, and 36-21; and

WHEREAS, the application is brought on behalf of Tabernacle of Praise, Inc., the owner of the site and the occupant of the proposed house of worship (the “Church”); and

WHEREAS, a public hearing was held on this application on September 10, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-

Brown; and

WHEREAS, Community Board 17, Brooklyn, recommends approval of the application; and

WHEREAS, Senator Kevin S. Parker, Assemblyman N. Nick Perry, and Councilman Jumaane Williams testified in support of the application; and

WHEREAS, the subject site is a rectangular interior lot located on the west side of Utica Avenue between Beverly Road and Clarendon Road, within a C8-1 zoning district; and

WHEREAS, the site, which is vacant, has 160 feet of frontage along Utica Avenue and 16,000 sq. ft. of lot area; and

WHEREAS, the applicant notes that, on May 2, 2006, the Board, under BSA Cal. No. 289-05-BZ, granted a special permit to develop the site with a house of worship pursuant to ZR §§ 73-50 and 73-431; and

WHEREAS, the applicant represents that construction pursuant to the special permit did not proceed due to financial constraints; however, the Church’s current facility, located at 1274 Utica Avenue cannot accommodate its growing congregation and diverse programming, which includes substantial religious education and community outreach; and

WHEREAS, the applicant now proposes to construct a three-story house of worship (Use Group 4) with building height of 59’-11” and 36,535 sq. ft. of floor area (2.28 FAR); and

WHEREAS, the applicant states that the variance is requested due to the following non-compliances: (1) no setback from the district boundary at the rear lot line (an open space with a minimum depth of 30’-0” is required beginning at curb level because the rear lot line coincides with a boundary between the subject C8-1 district and an R4 district, per ZR § 33-292); (2) the maximum front wall height proposed is 55’-8” (a maximum wall height of 35’-0” is permitted, with a 1-to-1 sky-exposure plane, per ZR § 33-432); and (3) 34 accessory off-street parking spaces (a minimum of 40 accessory parking spaces are required, per ZR § 36-21); and

WHEREAS, the proposal would allow for a main sanctuary, a chapel, a community center, and certain accessory spaces, including an underground parking facility, a banquet hall, a Christian book store and retail shop, a dance studio, offices, a safe room, and a terrace garden; and

WHEREAS, specifically, the applicant states that the house of worship would provide the following: at the sub-cellar level, 34 off-street parking spaces, a storage room, a garbage collection room, and a restroom; at the cellar level, a 1,456 sq.-ft. dance studio, a 2,052 sq.-ft. multi-purpose room, two classrooms, a security office, separate changing rooms for men and women, storage space, and a media room; at the

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first story, a main lobby, two auxiliary lobbies, a 1,188 sq.-ft. chapel, a 4,290 sq.-ft. banquet hall with kitchen, restrooms, and coat check areas, a 792 sq.-ft. bookstore, and a 594 sq.-ft. retail shop; at the second story and mezzanine level, the 6,300 sq.-ft. main sanctuary and 2,625 sq.-ft. mezzanine seating area, which can accommodate a total of 854 worshipers, the safe room, offices, a waiting room, a nursery, and restrooms; and, at the third story, the 1,580 sq.-ft. terrace garden, and three offices; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Church, which necessitate the requested variances: (1) to accommodate its membership, which currently consists of approximately 1,500 members but is expected to increase to approximately 1,700 by the time the proposed building is completed; (2) to provide for regular adult religious education classes and community and youth group activity space; (3) to hold special events such as weddings, funerals, and baptisms; (4) to provide the necessary sanctuary and worship space for the members; and (5) to provide space for a Christian bookstore to further the Church's publishing work; and

WHEREAS, the applicant notes that the main sanctuary will be used for two Sunday services and for holidays, and that when the main sanctuary is filled to capacity, the chapel and the banquet space will be opened for simultaneous worship via telecast; and

WHEREAS, the applicant states that the accessory spaces are necessary as follows: (1) the banquet hall will allow members of the Church to celebrate life events in the same space in which they regularly worship; (2) the bookstore will enable the Church to provide education and dissemination of its messages to the wider community; (3) the dance studio will provide space for Church members to practice song and dance, which the applicant states are essential components of members' religious activity; (4) the offices are necessary to provide space for Church administrators and staff; (5) the community center will provide meeting and program space for community youth groups and the elderly; (6) the safe room will house the Church's vault and provide a private meeting space for Church administrators to conduct sensitive business; and (7) the terrace garden provides an intimate outdoor space for quiet reflection and worship; and

WHEREAS, the applicant states that there is a direct nexus between the requested waivers and the programmatic needs of the Church; and

WHEREAS, in particular, the applicant asserts that a complying building could not provide adequate worship and program space for the Church, in that if the open space at the rear is provided and height, setback, and sky exposure plane requirements are met, only 692 worshipers would be able to gather in the main sanctuary space, which is 252 fewer than the 854 that can be accommodated under the proposal; since

two prayer services are held on a typical Sunday, the loss of 252 seats amounts to a loss of worship space for as many as 504 worshipers, which represents 34 percent of the 1,500-member congregation; and

WHEREAS, accordingly, the applicant states that the Church would have to hold a third worship service on Sundays in order to accommodate its current and projected membership, which would be costly and interfere with other Church programs and activities; and

WHEREAS, the applicant also studied the feasibility of a lesser variance scenario, in which a complying perimeter wall with a height of 30'-0" is provided and a 10'-0" setback is provided at the third story in the rear; and

WHEREAS, the applicant asserts that the lesser scenario also fails to provide sufficient space to accommodate the Church's programmatic needs, in that it results in a loss of 198 seats in the main sanctuary and 22 seats in the chapel; and

WHEREAS, to further support the relationship between the requested waivers and the Church's programmatic needs, the applicant submitted an analysis of how each program space would be affected by constructing the building without the requested waivers; based on this analysis, in addition to the reductions in the main sanctuary and the chapel discussed above, the community center, classrooms, the dance studio, the banquet hall, several offices, the safe room, the terrace garden, storage space, restrooms, and the nursery would have to be reduced in size; and

WHEREAS, accordingly, the applicant asserts that only the proposal will provide the necessary space for the Church to carry out its mission; and

WHEREAS, at hearing, the Board directed the applicant to explore a third design, in which the terrace garden was shifted to the rear of the building; and

WHEREAS, in response, the applicant demonstrated that such a configuration failed to properly address the programmatic need to be satisfied by the terrace, in that facing the rear of the site resulted in the terrace being within view of the nearby residences, which served to diminish its privacy and utility as an intimate space, and, as discussed below, increased the proposal's impact on surrounding residential uses; and

WHEREAS, turning to parking, the applicant states that providing complying parking (40 spaces instead of the proposed 34) in the cellar would require the storage and garbage collection rooms to be moved to the cellar, which would require displacement, elimination or significant reduction in the size of the dance studios, multi-purpose room, classrooms, security office, changing rooms, and media room; and

WHEREAS, the applicant represents that 50 percent of the Church's members live within walking distance (1/4

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mile) of the site, and that 85 percent live within one mile, and thus are unlikely to rely on an automobile to visit the site; and

WHEREAS in addition, the applicant states that there is adequate mass transit in the surrounding area, including four city busses, two subway lines, and three local car services; and

WHEREAS, finally, the applicant states that the Church leases a nearby parking lot at 1124 Utica Avenue (Block 4760, Lot 24) to provide an additional 40 parking spaces during Sunday and holiday services; and

WHEREAS, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Church create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right in the subject C8-1 zoning district, as is the proposed FAR; and

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by low- to medium-density residential, commercial and community facility uses; and

WHEREAS, in addition, the applicant states that where community facilities are found within the subject C8-1 district, they are typically three stories or more in height; in support of this statement, the applicant provided a height study, which reflects that of the 22 sites within 1/3 mile and with comparable lot area to the site, seven sites contain community facility buildings that are three stories or more in height, including: (1) 407 East 53rd Street (three-story former synagogue); (2) 5566 Kings Highway (four-story

elementary school); (3) 5402 Tilden Avenue (four-story elementary school); (4) 1244 Utica Avenue (three-story house of worship); (5) 810 East 49th Street (three-story house of worship); (6) 4801 Avenue D (three-story elementary school); and (7) 4402 Avenue D (three-story house of worship); and

WHEREAS, as such, the applicant asserts that the proposal is consistent with the bulk of community facilities on similar-sized sites in the surrounding area; and

WHEREAS, as to adjacent uses, the applicant states that one-story commercial buildings are immediately north, east, and south of the site, and that immediately west of the site are a series of two-story residential buildings, a vacant lot, and a large driveway; and

WHEREAS, the applicant notes that the proposed FAR is less than the maximum permitted as-of-right for a community facility in the C8-1 district; and

WHEREAS, in addition, the applicant asserts that with its dramatic swooping roof, modern streetwall, and "Living Green Wall" at the rear, the building has been designed to both beautify and enhance the commercial streetscape of Utica Avenue and maintain the residential character of the R4 district directly west of the site; and

WHEREAS, finally, the applicant represents that the building will be used predominantly by members of the surrounding community, including students at the nearby elementary schools, and that the application has received letters of support from many surrounding neighbors, including the adjacent business owners and three owners of the residential lots immediately west of the site; and

WHEREAS, at hearing, the Board directed the applicant to: (1) explore the feasibility of providing the terrace garden at the rear instead of at the front of the building on the third story; and (2) provide a schedule of events; and

WHEREAS, in response, the applicant provided the requested plan, but stated that a rear terrace garden would increase the building's impact on its residential neighbors, while diminishing the utility of the space for its users; as to the schedule of events, it was provided along with an analysis of how parking would be affected during large events; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created and that no development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

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WHEREAS, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Church's programmatic needs, in accordance with 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 Unlisted 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. 13BSA037K, dated April 21, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the March 2014 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a P.E.-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, the applicant conducted an air quality impact assessment and proposed an alternate means of ventilation to maintain a closed window condition, ensuring that acceptable interior air quality levels will be maintained in the building and that no significant air quality impacts to the proposed project are anticipated to occur; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under

ZR § 72-21 and grants a variance, to permit, on a site within a C8-1 zoning district, a three-story community facility building to be occupied as a house of worship (Use Group 4), which does not comply with distance from a district boundary, height and setback, sky-exposure plane, and parking regulations, and is contrary to ZR §§ 33-292, 33-432, and 36-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 25, 2014" –(17) sheets; and *on further condition*:

THAT the building parameters will be: three stories; a maximum building height of 59'-11"; a maximum wall height of 55'-8"; a maximum floor area of 36,535 sq. ft. (2.28 FAR); and a minimum of 34 parking spaces, as illustrated on the BSA-approved plans;

THAT the use will be limited to a house of worship (Use Group 4A), and accessory uses;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report; and

THAT acceptable interior air quality levels will be maintained in accordance with the alternates means of ventilation design measures noted on the BSA-approved plans;

THAT no commercial catering or retail will occur on the site;

THAT any change in the control or ownership of the building will require the prior approval of the Board;

THAT the above conditions will be listed on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans are considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

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269-13-BZ

CEQR #14-BSA-040M

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated August 22, 2013, acting on Department of Buildings Application No. 121689707, reads in pertinent part:

ZR 22-10, 22-20; Proposed Commercial Use/Dining area (Use Group 6) at Basement/Cellar in Zoning District R8B is not permitted as per ZR 22-10 “Uses Permitted As-of-Right;” and

WHEREAS, this is an application under ZR §§ 73-42 and 73-03, to permit the extension of an existing Use Group 6 use within a C1-8A zoning district into the adjacent R8B zoning district within the Upper West Side-Central Park West Historic District, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on February 2, 2014 after due notice by publication in *The City Record*, with continued hearings on March 11, 2014 and April 8, 2014, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, certain community members provided testimony in opposition to the proposal, citing concerns about traffic and late night refuse collection; and

WHEREAS, the subject site is located on the south side of West 73rd Street, between Columbus Avenue and Amsterdam Avenue; 110 West 73rd Street is located within

an R8B zoning district within the Upper West Side-Central Park West Historic District, with approximately 19 feet of frontage on West 73rd Street, and a total lot area of 1,941 sq. ft.; and

WHEREAS, 110 West 73rd Street is currently occupied by a four-story and basement townhouse building occupied by residential use; the building has 5,960 sq. ft. of floor area (3.12 FAR); and

WHEREAS, 110 West 73rd Street is adjacent to 106-108 West 73rd Street (Block 1144, Lot 35), which is fully within a C1-8A zoning district and occupied by a Use Group 6 restaurant, *Arte Café*; and

WHEREAS, the applicant proposes to extend the restaurant use across the zoning district boundary line between the R8B zoning district and the C1-8A zoning district, 18’-6” within the basement level with 1,298 sq. ft. of floor area; and

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-42 to allow the use to extend across the zoning district boundary into the R8B zoning district; and

WHEREAS, the applicant states that the extension of the restaurant use would allow for additional space for the existing restaurant; and

WHEREAS, the applicant states that the proposed extension would accommodate 12 dining tables and 69 restaurant patrons; and

WHEREAS, the applicant notes that the restaurant within the C1-8A zoning district occupies 2,384 sq. ft. of space in the cellar and 3,667 sq. ft. of floor area in the basement for a total of 6,051 sq. ft. of restaurant space; the remaining portions of 106-108 West 73rd Street are occupied by residential use and 10,480 sq. ft. of floor area; and

WHEREAS, the applicant does not propose any changes to 106-108 West 73rd Street and that no other changes than the conversion of the basement are proposed to 110 West 73rd Street; and

WHEREAS, the applicant states that 106-108 West 73rd Street and 110 West 73rd Street are under common ownership and the two lots (Lot 35 and Lot 37) will be merged; the merger will result in 20,053 sq. ft. of commercial floor area and 15,088 sq. ft. of residential floor area across the site; and

WHEREAS, ZR § 73-42 provides that the Board may permit the expansion of a conforming use into a district where such use is not permitted, provided that (1) the enlarged use is contained within a single block; (2) the expansion of either the depth or the width of the conforming use is no greater than 50 percent of either the depth or width of that portion of the zoning lot located in the district where such use is a conforming use; and that (3) the area of the expansion cannot exceed 50 percent of the area of the zoning

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lot located in the district where such use is a conforming use, and provided further that the required findings are made; and

WHEREAS, the findings are as follows: (a) there is no reasonable possibility of expanding the use within the existing district where it is conforming; (b) the conforming use existed prior to January 6, 1965, or the date of any applicable subsequent amendment to the zoning maps; and (c) the expanded use is not so situated or of such character or size as to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold condition that the use is contained on a single block, the applicant notes that the existing Arte Café located at 106-108 West 73rd Street is adjacent to and on the same block, Block 1144, as 110 West 73rd Street; and

WHEREAS, the applicant notes that the lot occupied by the existing conforming restaurant is 39 feet wide by 102 feet deep, with a lot area of 3,978 sq. ft., and the expansion with a width of 18'-6" and 1,298 sq. ft. of floor area, is less than 50 percent of the width and lot area within the C1-8A zoning district; and

WHEREAS, accordingly, the Board notes that the use and proposed expansion site are located within the same block; that the expansion does not exceed size restrictions; and the applicant has provided sufficient evidence showing that the restaurant use was in existence on Lot 35 prior to January 6, 1965; and

WHEREAS, as to the finding under ZR § 73-42(a), the applicant represents that there is not any reasonable possibility of expanding the use within the existing C1-8A zoning district because such use is not allowed above the first floor of the building; and

WHEREAS, further, the applicant notes that the adjacent building to the west is occupied by another business and therefore is not available to accommodate the expansion of the restaurant; and

WHEREAS, as to the finding under ZR § 73-42(b), the applicant represents that the use at 106-108 West 73rd Street was in existence prior to January 6, 1965; and

WHEREAS, in support of this assertion, the applicant submitted a Certificate of Occupancy from 1941, which reflects that the basement floor was occupied by restaurant use; and

WHEREAS, as to the finding under ZR § 73-42(c), the applicant asserts that the proposed use is not situated or of such character or size as to impair the essential character or future use of the surrounding area; and

WHEREAS, specifically, the applicant states that the expansion of the dining area across the basement adds only 12 dining tables for a maximum occupancy of 69 people; and

WHEREAS, the applicant notes that the use is compatible with the character of the neighborhood and is

located only 100 feet from the commercial thoroughfare of Columbus Avenue; and

WHEREAS, the applicant notes that there are several commercial and mixed-use buildings adjacent and across from the subject site, including a nine-story mixed-use building at the rear on West 72nd Street, which is within a C4-6A zoning district; and

WHEREAS, the applicant notes that the building owner also owns 112 West 73rd Street and it is in his interest to maintain conditions that are compatible with residential use; and

WHEREAS, the applicant states that the use will be limited to a restaurant and no bar is proposed and that the proposed hours of operation are 12:00 p.m. to 11:00 p.m. Sunday through Thursday and 12:00 p.m. to 12:00 a.m. Friday and Saturday; and

WHEREAS, the applicant states that the expansion of the restaurant is necessary to accommodate the dinner rush from 6:00 to 9:00 p.m. and that it does not anticipate using the 110 West 73rd Street space during later hours; and

WHEREAS, the Landmarks Preservation Commission issued a Certificate of No Effect, dated March 26, 2014, to approve interior alterations to the basement; and

WHEREAS, the Board directed the applicant to provide additional information on the proposed use of the rear yard, sound attenuation, refuse storage and collection, and outstanding DOB violations; and

WHEREAS, the applicant states that the rear yard will not be used for restaurant use; the applicant submitted photographs of the rear yard of 110 West 73rd Street that show it without restaurant use; and

WHEREAS, the applicant states that it will install and maintain sound board between 110 West 73rd Street and 112 West 73rd Street to attenuate any noise from the restaurant, that there will not be any speakers in the portion of the restaurant within the R8B zoning district, and that it will not use the portion of the restaurant within the R8B zoning district after 9:00 p.m.; and

WHEREAS, the applicant revised the plans to reflect sound board to be installed at the ground floor wall between 112 West 73rd Street and the subject building; and

WHEREAS, the applicant states that it will store refuse in its cellar space until ready for pick up and provided a letter from its refuse carting company stating that pick up will be scheduled for 7:00 a.m., Monday through Saturday; and

WHEREAS, the applicant states that it will resolve all outstanding DOB violations in the course of completing the proposed construction; and

WHEREAS, the applicant also notes that the front entrance at 110 West 73rd Street will only be used for emergency egress and not ingress or egress from the

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restaurant; and the two dwelling units currently occupying the basement will be eliminated to accommodate the restaurant, but that the remainder of the building within the R8B zoning district will remain occupied by residential use; and

WHEREAS, accordingly, the Board finds that the proposed expansion of the Use Group 6 use from the C1-8A zoning district into the R8B zoning district portion of the pending merged lots will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the proposed action will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-42 and 73-03; and

WHEREAS, the project is classified as a Type 1 action pursuant to 6 NYCRR Part 617.4 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA040M, dated August 22, 2013; and

WHEREAS, the EAS documents that the operation of the bank would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type 1 Negative declaration prepared in accordance with Article 8 of the New York State

Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-52 and 73-03, to permit the extension of an existing Use Group 6 use within a C1-8A zoning district into the adjacent R8B zoning district within the Upper West Side-Central Park West Historic District, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2014" – seven (7) sheets; and *on further condition*:

THAT the term of the grant is limited to five years, to expire on May 6, 2019;

THAT the restaurant use within the R8B portion of the site will be restricted to the basement level, as reflected on the BSA-approved plans;

THAT the occupancy of the basement level will be as reviewed and approved by DOB but will not exceed 69 patrons;

THAT there will not be any Use Group 6 use within the rear yard of 110 West 73rd Street;

THAT there will not be any entrance or egress of the restaurant through the 110 West 73rd Street frontage, which will be reserved for emergency use;

THAT refuse will be stored within the building until collection, which is scheduled for 7:00 a.m., Monday through Saturday;

THAT sound attenuation measures between 110 West 73rd Street and 112 West 73rd Street will be installed and maintained, as reflected on the BSA-approved plans;

THAT all lighting will be directed down and away from adjacent residential uses;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

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305-13-BZ

CEQR #14-BSA-070Q

APPLICANT – Akerman LLP, for Whitestone Plaza, LLC, owner; Whitestone Fitness D/B/A Dolphin Fitness, lessee.
SUBJECT – Application November 20, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Dolphin Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 30-50 Whitestone Expressway, Bounded by Ulmer Street to the north, Whitestone Expressway to the East and 31st Avenue to the south. Block 4363, Lot 100. Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner of the Department of Buildings (“DOB”), dated October 31, 2013, acting on DOB Application No. 401034180, reads, in pertinent part:

Physical culture establishment requires BSA special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within an M1-1 zoning district and partially within an M1-2 zoning district, within the Special College Point District, the legalization of an existing physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application April 8, 2014, after due notice by publication in the *City Record*, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 5, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of the Whitestone Expressway service road and Ulmer Street, partially within an M1-1 zoning district and partially within an M1-2 zoning district, within the Special College Point District; and

WHEREAS, the site has approximately 209 feet of frontage along the Whitestone Expressway service road, approximately 494 feet of frontage along Ulmer Street, and 157,472 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story commercial building with approximately 104,577 sq. ft. of floor area (0.66 FAR); and

WHEREAS, the PCE occupies 6,465 sq. ft. of floor area on the first story and 9,712 sq. ft. of floor area on the second story, for a total PCE floor area of 16,177 sq. ft.; and

WHEREAS, the PCE is currently operated as Dolphin Fitness and, according to the applicant, has been operating since 2003; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE are Monday through Thursday, from 6:00 a.m. to 12:00 a.m., Friday, from 6:00 a.m. to 11:00 p.m., Saturday, from 7:00 a.m. to 7:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the accessibility of the PCE; and (2) open DOB violations at the property; and

WHEREAS, in response, the applicant provided: (1) amended plans clarifying the accessibility of the PCE, including an illustration of the path of egress; and (2) a letter from the owner’s architect, which stated that the open violations would be resolved after the issuance of the special permit; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the

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Environmental Assessment Statement, CEQR No. 14BSA070Q dated November 4, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially within an M1-1 zoning district and partially within an M1-2 zoning district, within the Special College Point District, the legalization of an existing physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 11, 2014” – Two (2) sheets and “Received April 16, 2014” – One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on May 6, 2019;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

318-13-BZ CEQR #14-BSA-080M

APPLICANT – Bryan Cave LLP, for TJD 21 LLC, owners.

SUBJECT – Application December 13, 2013 – Variance (§72-21) to permit a five-story building containing retail and residential use, contrary to use regulations (§44-00). M1-5B zoning district.

PREMISES AFFECTED – 74 Grand Street, North side of Grand Street, 25 feet east of Wooster Street. Block 425, Lot 60, Borough of Manhattan.

COMMUNITY BOARD # 2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated December 2, 2013, acting on DOB Application No. 121784701, reads, in pertinent part:

Use Group 2 is not permitted in M1-5B zoning district pursuant to ZR 42-10;

Use Group 6 is not permitted below the floor level of the 2nd story in M1-5B districts pursuant to ZR 42-14(D)(2)(b); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the construction of a six-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor and cellar retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on May 6, 2014; and

WHEREAS, the premises and surrounding area had

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site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the north side of Grand Street between Wooster Street and Greene Street, within an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 25 feet of frontage along Grand Street, a lot depth of 100 feet, and 2,500 sq. ft. of lot area; and

WHEREAS, the site is currently vacant but was previously occupied by a five-story, Neo-Grec-style, cast-iron loft building (the “Historic Building”) that was constructed in 1886 and was described by the Landmarks Preservation Commission (“LPC”) as contributing to the special architectural and historic character of the SoHo Cast Iron Historic District; and

WHEREAS, the applicant represents that the Historic Building was demolished following an emergency declaration issued by DOB in 2009; LPC assented to the demolition on condition that the façade and other architecturally-distinct components be preserved and incorporated (in their original configuration) into any new building at the site; and

WHEREAS, the applicant represents that the proposed mixed residential (Use Group 2) and commercial (Use Group 6) building, which will incorporate the Historic Building façade, will have a total floor area of 12,493 sq. ft. (4.98 FAR), a residential floor area of 10,807.3 sq. ft. (4.3 FAR), a commercial floor area of 1,686 sq. ft. (0.68 FAR), a street wall height of 78’-7”, a building height of 90’-9”, and a rear yard depth of 20 feet beginning at the second story; the applicant notes that the cellar will include retail space, mechanical rooms, and accessory storage for the residences; the first story will be occupied by retail space and the residential lobby; and the second through sixth stories will be occupied by a total of four dwelling units; and

WHEREAS, because Use Group 2 is not permitted and Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district, the applicant seeks use variances; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the history of development at the site, namely its Historic Building and the LPC requirement that the façade of the Historic Building be restored and incorporated into any redevelopment of the site; (2); the narrow lot width and small lot area of the site; and (3) the condition of the site’s soil; and

WHEREAS, the applicant contends that the Historic

Building at the site and the LPC requirement to restore the building’s façade are unique conditions that create an unnecessary hardship in development the site with a conforming use; and

WHEREAS, as noted above, the applicant states that from 1886 until 2009, the site was occupied by the Historic Building; in 2009, DOB determined that—due in part to excavation at an adjacent site (72 Grand Street)—the building was approximately 25 inches out of alignment and in danger of collapse; accordingly, DOB ordered the owner to demolish the building; and

WHEREAS, the applicant states that subsequent to DOB’s order, on November 23, 2009, the owner entered into an agreement with LPC whereby it was permitted to demolish the Historic Building provided that the cast-iron façade was “fully surveyed and catalogued, disassembled and stored in a secure and safe manner for future reconstruction”; and

WHEREAS, in particular, the applicant states that LPC mandated that the following Historic Building elements be preserved “for use in conjunction with future construction at the site”: the cast-iron on the Grand Street façade; window shutters on the third floor at the rear of the building; the barrel vault cast-iron skylight at the rear of the first floor; and sidewalk cast iron vault lites; and

WHEREAS, the applicant represents that the preservation and incorporation of these elements into a modern building significantly increased the construction costs for the proposed building; and

WHEREAS, further, the applicant states that because the floors were required to line up with the windows of the Historic Building’s façade, unusually high floor-to-floor heights are required (18’-8” at the first story and between 13’-7” and 12’-6” on the second through fifth stories), which reduces the number of stories in the building, which in turn reduces the amount of marketable space; the applicant notes that the sixth story is above the historic façade and set back; therefore, it was not constrained by the façade; and

WHEREAS, the applicant contends that the site’s lot area of 2,500 sq. ft. and lot width of 25 feet are unique among vacant lots in the surrounding area; and

WHEREAS, in support of this statement, the applicant submitted its study of the sites within the M1-5A and M1-5B zoning districts spanning from the south side of Houston Street at the northern boundary, by Broadway to the east, Avenue of the Americas to the west, and Canal Street to the south; based on the study, there are only eight vacant sites, three of which are surface parking lots, four of which have a lot width of less than 30 feet, and three of which have a lot area of 2,500 sq. ft. or less; of the latter three, two are corner lots; if only a 400-foot radius is considered, there are only four vacant sites (other than the subject site), only two of which have lot widths of less than 30 feet; thus, the applicant

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asserts that its site has a unique width and size when compared to other vacant sites; and

WHEREAS, the applicant asserts that the site's narrow width and small size create a practical difficulty in developing the site for a conforming use; specifically, the applicant states that such characteristics result in an inherently inefficient and unmarketable floorplate because a disproportionate share (33 percent) of a conforming building at the site would be devoted to building core; and

WHEREAS, to support this assertion, the applicant examined the feasibility of a conforming hotel (Use Group 5) at the site; according to the hotel plans, the stairs, elevator, and public corridor required under the Building Code would be sufficient for a hotel with nearly twice as much floorplate as is possible at this narrow, small site; such floorplates would yield no more than three rooms per story; and

WHEREAS, likewise, the applicant states that other conforming commercial and manufacturing uses—those listed in Use Group 7, 9, 11, 16, and 17 (which include business schools, gymnasias, printing establishments, and carpentry workshops)—are likely to locate in such a small, inefficient space; and

WHEREAS, accordingly, the applicant concludes that conforming uses are infeasible at the site, due to the inefficient building that results from its narrow width and small size; and

WHEREAS, the applicant also contends that its soil conditions impose an additional unique hardship; and

WHEREAS, in support of this contention, the applicant provided a geotechnical report, which concluded that a deep foundation system would be necessary rather than a less-expensive spread footing due to the presence of soil with weak and unstable bearing capacity; likewise, the site's soil requires more expensive structural components to resist seismic loads, all at premium costs; and

WHEREAS, finally, the applicant asserts that, in the aggregate, the site's unique conditions make a conforming development at the site infeasible; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of an as-of-right 4.68 FAR hotel scenario (11 hotel rooms); and

WHEREAS, the applicant concluded that the as-of-right scenario resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the

proposal results in a positive rate of return, making it economically viable; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of medium-density residential and commercial uses, with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant represents that more than 50 percent of the buildings within 400 feet of the site are either residential, mixed residential and commercial, or Joint Living-Work Quarters for Artists; thus, the applicant asserts that the existing context includes a significant amount of residential use; and

WHEREAS, the applicant also states that the ground floor Use Group 6 use will be consistent with nearby ground floor uses, which are overwhelmingly retail, including clothing stores, art galleries, and home furnishings stores; and

WHEREAS, the applicant also notes that the proposal will be a natural complement to developments on the corner of Wooster Street and Grand Street and on West Broadway, which were recently approved by CPC; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, further, the Board notes that the compatibility of residences in the subject M1-5B zoning district within the SoHo Cast Iron Historic District is acknowledged in ZR § 74-712(a) (*Developments in Historic Districts*), a City Planning Commission special permit that would allow a residence of a similar size but for the fact that the site became vacant too recently; a precondition for that special permit is that the site must have been vacant as of December 15, 2003, and, as noted above, the subject site became vacant upon the demolition of the Historic Building in 2010; and

WHEREAS, as to bulk, the applicant states that the building's street wall height of 78'-7" and building height of 90'-9" are both comparable to buildings in the immediate vicinity, and similar to the Historic Building, which occupied the site for more than 100 years; and

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WHEREAS, at hearing, the Board expressed concern regarding the proposed rear yard depth of 20'-0"; the Board noted that although there are no bulk regulations for residential buildings in manufacturing districts, the Board has historically required a rear yard depth of 30'-0", which is consistent with the requirement in zoning districts where residential use is permitted as-of-right; and

WHEREAS, in response, the applicant contends that a rear yard depth of 20'-0" is necessary and appropriate in this case because the development is not viable with a rear yard depth of 30'-0"; the applicant asserts that the stair and elevator cores and mechanical rooms would have to be reconfigured to accommodate a rear yard depth of 30'-0", resulting in a reduction of the size of the dwelling units and the retail space; and

WHEREAS, the applicant also notes that the building cannot be redesigned to capture more floor area; due to the unusually high floor-to-floor heights, constraints owing to the requirement to incorporate the Historic Building façade, and the LPC requirement to set back at the sixth story in order to reveal the cornice, a substantial amount of floor area is lost even with a rear yard depth of 20'-0" and it cannot be recouped; likewise, the mezzanine level cannot be extended to provide more usable floor area without being reclassified as a story, triggering the Building Code requirement to provide a second fire stair; and

WHEREAS, in support of the applicant's contention that the building cannot provide a rear yard depth of greater than 20'-0", the applicant submitted a feasibility study of a building with a rear yard depth of 30'-0"; based on the study, the building with the rear yard depth of 30'-0" is not a viable alternative to the proposal; and

WHEREAS, the applicant asserts that a rear yard depth of 20'-0" is typical for buildings in the area and submitted an Open Space Study, which reflects that of the sites occupied by residential uses on the block, portions of only four building out of ten have back-to-back rear yard depths in excess of 20'-0" and those within 100'-0" of the corner (which the subject site is) have rear yard depths ranging from 15'-0" to 21'-6"; and

WHEREAS, the applicant also notes that a rear yard depth of 20'-0" is an improvement over the Historic Building, which also had dwelling units but had a rear yard depth of only 15'-0", and the proposed windows, both within the historic façade and at the rear, are well in excess of the sizes required under the Multiple Dwelling Law; therefore, the applicant contends that with regard to light and ventilation, the proposal is both a substantial improvement over a historic condition and more than adequate by modern standards; further, the initial proposal included rear balconies, which would have further reduced the depth of the rear yard—and light and ventilation—to the extent of their projection; at the Board's direction, the balconies were

eliminated; and

WHEREAS, finally, the applicant states that none of the dwelling units will rely solely on the rear yard for light and ventilation since the units are floor-through and thus also have windows opening upon on Grand Street; and

WHEREAS, the Board is persuaded that a rear yard depth of 20'-0" is appropriate given the site's unique physical conditions; and

WHEREAS, LPC has approved the proposal by Certificate of Appropriateness, dated August 13, 2013; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's history of development, size and narrowness, and the limited economic potential of conforming uses on the lot; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Type 1 action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-080M, dated May 1, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed the applicant's February 2013 Phase I report and that, due to site specific circumstances, DEP recommends that the applicant implement a DEP-approved Phase II Investigative Protocol prior to the issuance of permits by DOB relating to the issuance of soil disturbance; and

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WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type 1 Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the construction of a six-story mixed residential and commercial building (Use Groups 2 and 6) with ground floor and cellar retail, contrary to ZR §§ 42-10 and 42-14, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 17, 2014"- Sixteen (16) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum total floor area of 12,493 sq. ft. (4.98 FAR), a residential floor area of 10,807.3 sq. ft. (4.3 FAR), four dwelling units, a commercial floor area of 1,686 sq. ft. (0.68 FAR), a maximum street wall height of 78'-7", a maximum building height of 90'-9", and a minimum rear yard depth of 20 feet beginning at the second story;

THAT the applicant will implement a DEP-approved Phase II Investigation Protocol and, should the test reveal the need for hazardous materials remediation, the applicant will submit a remedial action plan and health and safety plan to be approved by DEP prior to the issuance of any permit by DOB that allows soil disturbance, and that the remedial action plan and health and safety plan shall be implemented as part of construction;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 6, 2014.

103-13-BZ

APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC, owner.

SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building, contrary to §42-10 zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256' west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision, hearing closed.

124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for adjourned hearing.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for adjourned hearing.

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178-13-BZ

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) to allow an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

250-13-BZ

APPLICANT – Warsaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group, LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White Plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for adjourned hearing.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for adjourned hearing.

273-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for 321-23 East 60th Street LLC, owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the development of an eight-story

residential building containing 28 dwelling units, contrary to use regulations (§32-10). C8-4 zoning district.

PREMISES AFFECTED – 321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit. Block 1435, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision, hearing closed.

277-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of a 12-story, 125 unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), base and building height (§23-633), and parking (§25-23). R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for continued hearing.

279-13-BZ

APPLICANT – Warsaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar, first through third floors of a new building to be constructed. M1-6 zoning district.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150' West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

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286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one-story residential home, contrary to front yard (§23-45); side yard (§23-161); floor area and lot coverage (§23-141) and off street parking requirements (§25-621(B)). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for continued hearing.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

331-13-BZ

APPLICANT – Warshaw Burstein, LLP, for Isaac Chera, owner; 2007 86th Street Fitness Group, LLP, lessee.

SUBJECT – Application December 31, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within the existing building at the Premises. C4-2 zoning district.

PREMISES AFFECTED – 2005 86th Street aka 2007 86th Street, north side of 86th street, west of its intersection with 20th Avenue, Block 6346, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

3-14-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of a school (*Saint David's School*), contrary to lot coverage (§24-11, 24-12), floor area (§24-11), rear yard (§24-36), rear wall setback (§24-552b), base height (§24-522, 24-633), streetwall (§23-692c, 99-051b), maximum height (§99-054b), and enlargement to a non-complying building (§54-31) regulations. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for continued hearing.

7-14-BZ

APPLICANT – Greenberg Traurig, LLP, for Rockaway Realty LLC, owner; 1380 Rockaway Parkway Fitness Group, LLC, lessee.

SUBJECT – Application January 16, 2014 – Special Permit (§73-36) to permit the conversion of the existing on-story, plus cellar to a physical culture establishment (*Planet Fitness*) in connection with an application to rezone the property from an R5D/C1-3(Z) to an R5D/C2-3(ZD).

PREMISES AFFECTED – 1380 Rockaway Parkway, west side of Rockaway Parkway, midblock between Farragut

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Road and Glenwood Road, 204.85' south of Farragut Road,
Block 8165, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 10,
2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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May 21, 2014

DIRECTORY

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97-14-BZ

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98-14-BZ

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99-14-BZ

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100-14-BZ

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101-14-BZ

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102-14-BZ

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103-14-A

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DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 10, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 10, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.
SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.
PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

47-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Flatlands 78, L.L.C., owner.

SUBJECT – Application December 13, 2013 – Amendment of a previously approved Variance (§72-21) which permitted construction of a one-story and cellar retail drug store and five smaller stores with accessory parking. The amendment is seeking to remove the twenty-year term restriction imposed by the Board. C2-3/R5D & R5B zoning district.
PREMISES AFFECTED – 7802 Flatlands Avenue, corner and through lot located on the east side of Flatlands Avenue between East 78th Street and East 79th Street, Block 8015, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

280-01-BZ

APPLICANT – Akerman, LLP, for S&M Enterprises, owner.

SUBJECT – Application April 25, 2014 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the construction of a mixed-use building which expired on May 7, 2014. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2nd Avenue, west side of 2nd Avenue between East 36th and East 37th Streets, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

341-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owner.

SUBJECT – Application March 25, 2014 – Amendment of previously approved Variance (§72-21) which permitted Use Group (UG 6) retail stores on the first floor of the existing five story building which is now seeking to eliminated the term of years which in April 8, 2023. R8B zoning district.
PREMISES AFFECTED – 231 East 58th Street, north side of East 58th Street between Second and Third Avenues, Block 1332, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

45-07-A

APPLICANT – Eric Palatnik, P.C., for Nader Kohanter, owner.

SUBJECT – Application April 25, 2014 – Common Law Vesting Rights to permit an extension of time to complete construction and obtain a certificate of occupancy to obtain the rights to complete construction on an attic mixed- used residential community facility. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue "O" and Avenue "N", Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ZONING CALENDAR

256-13-BZ thru 259-13-BZ

260-13-A thru 263-13-A

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – Variance (§72-21) to request a variance of Section 23-45(sat), 23-461(a) and Section 23-892(a) for a proposed residential scheme on what is not and has historically been a series of vacant lots located within the bed of a mapped street of Article 3 of the General City GCL 35. R3-2 zoning district.

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

299-13-BZ

APPLICANT – Eric Palatnik, P.C., for David Gerstenfeld, owner; Michael Nejat, lessee.

SUBJECT – Application November 1, 2013 – Special Permit (§73-126) to permit in a R3A zoning district, the partial legalization, reduction in size and merger of two existing adjacent ambulatory diagnostic treatment health care facilities (Use Group 4). R3-A zoning district.

PREMISES AFFECTED – 4299 Hylan Boulevard, between Thornycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39 & 41, Borough of Staten Island.

COMMUNITY BOARD #3SI

324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (ZR 23-141). R2 zoning district.

PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

COMMUNITY BOARD #8Q

15-14-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Ink., owner.

SUBJECT – Application January 24, 2014 – Variance (§72-21) proposed enlargement of existing not-for-profit school building (*Holy Cross Greek Orthodox Church*) that will not comply with §24-111 community facility floor area, §24-54 sky exposure plane and §25-31 accessory parking spaces. R2 zoning district.

PREMISES AFFECTED – 12-03 150th Street, southeast corner of 150th Street and 12th Avenue, Block 4517, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

27-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 496 Broadway LLC., owner.

SUBJECT – Application February 7, 2014 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar, contrary to use regulations (§42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 496 Broadway, east side of Broadway between Broome Street and Spring Street, Block 483, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

39-14-BZ

APPLICANT – Francis R. Angelino, Esq., for 97-101 Reade LLC and II LLC, owner; Exceed Fitness LLC, lessee.

SUBJECT – Application March 17, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Exceed Fitness*) within an existing building on the ground floor, cellar and sub-cellar located in C6-3A Zoning District.

PREMISES AFFECTED – 97 Reade Street, between West Broadway and Church Street, Block 145, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 13, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

371-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 655 Fifth Avenue LLC, owner; Sator Realty, Ink, lessee.
SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Facility*) which expires May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 655 Fifth Avenue, northeast corner of Fifth Avenue and East 52nd Street, Block 1288, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a physical culture establishment (“PCE”), which expired on May 11, 2014; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in *The City Record*, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located at the northeast corner of the intersection of Fifth Avenue and East 52nd Street, within a C5-3 zoning district, within the Special Midtown District; and

WHEREAS, the site is occupied by a nine-story commercial building; and

WHEREAS, the PCE is located on portions of the eighth and ninth stories of the subject building (7,817 sq. ft. of floor area) and on the eighth story and roof of the adjacent building (7,332 sq. ft. of floor area), which is known as 663 Fifth Avenue (Block 1288, Lot 3); the PCE occupies a total of 15,149 sq. ft. of floor area; and

WHEREAS, the PCE is operated as The Facility; and

WHEREAS, on May 11, 2004, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, on a site within a C5-3 zoning district, within the Special Midtown District the operation of a PCE for a term of ten years, to expire on May 11, 2014; on that same day, under BSA Cal. No. 372-03-BZ, the Board granted a special permit for the operation of the PCE at 663 Fifth Avenue; and

WHEREAS, the applicant now seeks an extension of the term of the PCE special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 11, 2004, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received January 31, 2014’- (5) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on May 11, 2024;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, May 13, 2014.

372-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Sator Realty, Ink, owner.

SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Facility*) which expires May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 663 Fifth Avenue, East side of Fifth Avenue, between East 52nd and 53rd Streets, Block 1288, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a physical culture establishment (“PCE”), which expired on May 11, 014; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in *The City Record*, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Fifth Avenue between East 52nd Street and East 53rd Street, within a C5-3 zoning district, within the Special Midtown District; and

WHEREAS, the site is occupied by an eight-story commercial building; and

WHEREAS, the PCE is located on portions of the eighth story and roof of the subject building (7,332 sq. ft. of floor area) and on portions of the eighth and ninth stories of the subject building (7,817 sq. ft. of floor area), which is known as 655 Fifth Avenue (Block 1288, Lot 1); the PCE occupies a total of 15,149 sq. ft. of floor area; and

WHEREAS, the PCE is operated as The Facility; and

WHEREAS, on May 11, 2004, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, on a site within a C5-3 zoning district, within the Special Midtown District the operation of a PCE for a term of ten years, to expire on May 11, 2014; on that same day, under BSA Cal. No. 371-03-BZ, the Board granted a special permit for the operation of the PCE at 655 Fifth Avenue; and

WHEREAS, the applicant now seeks an extension of the term of the PCE special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 11, 2004, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received January 31, 2014’ - (5) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to

expire on May 11, 2024;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, May 13, 2014.

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application January 2, 2014 – Amendment of an approved Variance (§72-21) which permitted construction of a two-story and mezzanine, two-family residential building, contrary to front yard regulations (§23-45(a)); the amendment seeks to permit construction of a three-story, three-family residential building. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow certain modifications to a residential building that does not comply with the front yard requirements; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 29, 2014, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast

MINUTES

corner of the intersection of Glenmore Avenue and Milford Street, within an R5 zoning district; and

WHEREAS, the site has approximately 20 feet of frontage along Glenmore Avenue, 90 feet of frontage along Milford Street, and 1,800 sq. ft. of lot area; and

WHEREAS, the site is vacant; and

WHEREAS, on June 23, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a two-story, two-family residential building at the site that did not comply with the front yard requirements of ZR § 23-45(a) (the "Original Building"); and

WHEREAS, the Original Building was proposed to have two stories and a mezzanine, 2,241 sq. ft. of floor area (1.24 FAR), a wall height of 30'-0", a building height of 32'-9", two dwelling units, two parking spaces in the side yard, a front yard with a depth of 10'-0" along Glenmore Avenue, no front yard along Milford Street, and a side yard with a width of 30'-6"; and

WHEREAS, pursuant to the grant, substantial construction was to be completed by June 23, 2013; however, as of that date, substantial construction had not been completed; accordingly, on October 29, 2013, the Board granted an extension of time to complete construction for two years, to expire on October 29, 2015; and

WHEREAS, the applicant now seeks to amend the grant to allow three stories, 2,660.61 sq. ft. of floor area (1.48 FAR), a wall height of 28'-4", a building height of 31'-10", three dwelling units, two parking spaces in the side yard, a front yard with a depth of 10'-0" along Glenmore Avenue, no front yard along Milford Street, and a side yard with a width of 45'-0" (the "Proposed Building"); and

WHEREAS, the applicant notes that the Proposed Building deviates from the Original Building as follows: (1) an increase in floor area of 419.61 sq. ft.; (2) an FAR increase of 0.24; (3) a 1'-8" decrease in wall height; (4) a 1'-1" decrease in building height; and (5) a 14'-6" increase in the proposed side yard; and

WHEREAS, the applicant notes that, as with the Original Building, the Proposed Building complies in all respects with the R5 bulk regulations, except that, like the Original Building, it does not provide a front yard with a depth of 10'-0" along Milford Street; thus, the scope of the waiver requested has not changed; and

WHEREAS, further, the applicant states that although the Proposed Building includes a modest increase in floor area, its wall and building height are decreased, and the width of its side yard is increased by nearly 50 percent; and

WHEREAS, in addition, the applicant contends that the Proposed Building is consistent with the character of the surrounding community, which, in the original grant, the Board recognized as including mostly two- and three-story homes and multiple dwellings; and

WHEREAS, the applicant also notes that, in response to the Board's comments at hearing, it revised the Proposed Building to provide a wider side yard and to align with the street wall location and height of the adjacent building along

Glenmore Avenue; and

WHEREAS, based upon its review of the record, the Board finds that the proposed modification is appropriate, with certain conditions, as noted below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 23, 2009, to permit the noted modifications, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received April 11, 2014' - (11) sheets; and *on further condition*:

THAT bulk parameters of the building will be as follows: a maximum of three stories, a maximum of 2,660.61 sq. ft. of floor area (1.48 FAR), a maximum wall height of 28'-4", a maximum building height of 31'-10", three dwelling units, two parking spaces in the side yard, a minimum front yard depth of 10'-0" along Glenmore Avenue, and a minimum side yard width of 45'-0";

THAT substantial construction will be completed by October 29, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board will remain in effect;

THAT DOB must 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."

(DOB Application No. 302233189)

Adopted by the Board of Standards and Appeals, May 13, 2014.

457-56-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Medow-"The Shop" 148-152L.P., owner.

SUBJECT – Application November 19, 2013 – Extension of Term of variance permitting accessory parking of motor vehicles, customer parking, and loading and unloading in conjunction with adjacent factory building. R6B zoning district.

PREMISES AFFECTED – 152-154 India Street, Southern side of India Street, 150 ft. east of intersection of India Street and Manhattan Avenue. Block 2541, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4
Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

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751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Baron Properties III, Inc., owner.

SUBJECT – Application October 1, 2013 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (*Genesis Auto Town*) which expired on January 23, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2001; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, northwest corner of intersection of Northern Boulevard and 201st Street, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for continued hearing.

278-86-BZ

APPLICANT – Eric Palatnik P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 29, 2013 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (*White Castle*), which expired on November 26, 2011, amendment to the plans, and Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fteley Avenue thru to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4
Negative:.....0
Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision, hearing closed.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184' east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for adjourned hearing.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

43-14-A

APPLICANT – Rosan & Rosan, P.C., for Milburn Hotel, owner.

SUBJECT – Application March 14, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize 120 hotel units, as provided recent (2010) legislation under Chapters 225 and 566 of the Laws of New York. R8B zoning district.

PREMISES AFFECTED – 242 West 76th Street, south side of West 76th Street, 112' west of Broadway, between Broadway and West End Avenue, Block 1167, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy for use of certain dwelling units within Class A multiple dwelling for other than permanent residence purposes pursuant to Multiple Dwelling Law § 120; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in *The City Record*, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of West 76th Street between West End Avenue and Broadway, within an R8B zoning district; and

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WHEREAS, the site has 75 feet of frontage along West 76th Street and 7,824 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 15-story multiple dwelling; the building is known as The Millburn Hotel; according to the last-issued certificate of occupancy (“CO”) for the building (CO No. 102797127, issued March 24, 2009), the building contains 137 Class A dwelling units; and

WHEREAS, the applicant states that the building was constructed as a hotel in 1926 and that the vast majority of its dwelling units (120 units) have always been other than permanent residence purposes; and

WHEREAS, the applicant notes that while the original CO (No. 11583, issued October 22, 1926) described the building as a “hotel,” subsequent COs, including the current CO, describe the building as a Class A multiple dwelling; and

WHEREAS, on May 1, 2011, MDL § 120 was amended to permit the owners of certain Class A multiple dwellings to maintain existing dwelling units used for other than permanent residence purposes (i.e., hotel rooms) provided that, among other things, the building is made to comply with the MDL § 67 provisions relating to transient use and an amended CO is obtained to reflect such transient use; and

WHEREAS, pursuant to MDL § 120, such amended CO was to be obtained prior to May 1, 2013 and the Department of Buildings (“DOB”) was authorized to extend the time to obtain the CO until May 1, 2014, provided certain findings were satisfied; if a CO has not been obtained by May 1, 2014, under MDL § 120(3), the Board

may grant further extensions of time to obtain a [CO] in a case where there are circumstances beyond the applicant’s control or hardship in the way of obtaining such [CO] within the time allowed by [DOB] but no more than two such extensions of one year each shall be granted for a building and no such extension shall be granted unless the Board finds that there are no outstanding building or fire code violations of record at the property; and

WHEREAS, the applicant represents that the subject building is eligible to seek an amended CO for transient use pursuant to MDL § 120 and that it has taken certain steps towards obtaining such CO, including: (1) registering the building with DOB as Class A multiple dwelling with transient units; (2) filing an application with DOB for the amended CO; and (3) obtaining permits and installing required sprinkler and fire alarm systems; and

WHEREAS, the applicant notes that by letter dated April 16, 2013, DOB extended the time period to obtain the amended CO until May 1, 2014; and

WHEREAS, the applicant now seeks an extension of time to obtain the amended CO; and

WHEREAS, as noted above, the Board may grant an extension of time to obtain a CO pursuant to MDL § 120(3), provided it finds that: (1) there are circumstances beyond the applicant’s control or hardship in the way of obtaining the amended CO; and (2) the building has no outstanding Building Code or Fire Code violations; and

WHEREAS, the applicant states that the complexity of the required sprinkler and fire alarm work resulted in significant delays in obtaining permits, installing system elements, and testing such systems; in addition, the applicant represents that there were significant delays in obtaining Fire Department approvals due to the fact that the building did not already have a CO for transient use (the approvals were necessary for the amended CO and the Fire Department was requiring the amended CO prior to issuing its approvals); and

WHEREAS, therefore, the Board agrees with the applicant that there have been circumstances beyond its control in obtaining the amended CO; and

WHEREAS, as to whether there are open Building Code or Fire Code violations, by letter dated April 28, 2014, the Fire Department confirmed that there are no open Fire Code violations at the site, and by letter dated April 30, 2014, DOB confirmed that there are no open Building Code violations at the site; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

Therefore it is Resolved, that this application to extend the time to obtain a certificate of occupancy for use of 120 dwelling units within the subject Class A multiple dwelling for other than permanent residence purposes pursuant to Multiple Dwelling Law § 120, is granted and will expire on May 1, 2015.

(DOB Application No. 120829540)

Adopted by the Board of Standards and Appeals, May 13, 2014.

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

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ZONING CALENDAR

299-12-BZ

CEQR #13-BSA-048M

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated September 26, 2012, acting on Department of Buildings Application No. 120801052, reads in pertinent part:

ZR 43-311, ZR 42-312 – 20'-0" rear yard is required for interior portion of lot beyond 100'-0" of front line.

ZR 43-43 – Proposed front wall exceeds 85'-0", applicable sky exposure plane for both wide and narrow streets violated; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for rear yard, height and setback, and sky exposure plane regulations contrary to ZR §§ 43-12, 43-311, 43-312, and 43-43; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, with continued hearings on November 26, 2013, January 14, 2014, February 11, 2014, and April 8, 2014, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the applicant initially proposed to construct a 12-story commercial building with a total floor area of 157,280 sq. ft. (6.68 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the requested relief and bulk of the building; and

WHEREAS, in response, the applicant revised the proposal to reflect a floor area of 145,483 sq. ft. (6.18 FAR); and

WHEREAS, at hearing, the Board directed the applicant

to further reduce the request for relief so as to reflect the minimum variance; and

WHEREAS, the current proposal reflects a ten-story commercial building with a total floor area of 117,705 sq. ft. (5.0 FAR), a height of 175 feet to the roof of the tenth floor and 199 feet to the top of the mechanicals, a Use Group 6 retail and restaurant use on the cellar, first and second floors, and Use Group 6 office use in the remainder of the building; and

WHEREAS, the proposed building will have the following non-complying parameters: a wall height of 185 feet with no setbacks above 85 feet to a total height of 199 feet after a 10'-0" setback (the minimum required setbacks are 20'-0" along West 13th Street and 15'-0" along West 14th Street and Tenth Avenue); intrusions into the sky exposure plane at West 13th Street, West 14th Street, and Tenth Avenue, and no rear yard (a rear yard with a minimum depth of 20'-0" is required in the 53'-0"-wide portion of the site along the West 13th Street frontage and the second-floor terrace is 4'-6" above the 23'-0" permitted obstruction threshold in the rear yard); and

WHEREAS, Community Board 2, Manhattan, reviewed the applicant's original proposal and recommended a disapproval based specifically an objection to an FAR waiver and to the remaining waivers unless the variance limits any eating and drinking establishment on the site to a maximum size of 3,000 sq. ft.; and

WHEREAS, State Senator Brad Hoylman and former City Council Speaker Christine Quinn provided testimony in opposition to the entire application; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to the initial application, citing concerns about an increase in floor area but did not object to the other waivers; and

WHEREAS, the Greenwich Village Community Task Force testified in opposition to the FAR waiver in the original proposal and in support of the other aspects of this application; and

WHEREAS, the Standard Hotel provided testimony in opposition to the application; and

WHEREAS, a representative of the adjacent owner to the east (450 West 14th Street/the High Line Building) (the "High Line Building") provided testimony in opposition to the proposal, citing concerns about whether or not the site conditions were unique; that a complying building could realize a reasonable rate of return; that the proposed building is not compatible with the area context; and that the requested variance does not reflect the minimum necessary; and

WHEREAS, the site is an L-shaped lot with frontage on Tenth Avenue, West 13th Street and West 14th Street, in an M1-5 zoning district; and

WHEREAS, the site is currently occupied by two three-story buildings formerly used for meat processing that are proposed to be demolished; and

WHEREAS, the site has 206 feet of frontage on the east side of Tenth Avenue, 153 feet of frontage on the north side of

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West 13th Street, 75 feet of frontage on the south side of West 14th Street, and a lot area of 23,541 sq. ft.; and

WHEREAS, the High Line, an elevated former railroad trestle, with a height of 25 feet, extends diagonally across the eastern part of the site, including the entire eastern lot line, such that the site has an irregular shape, as discussed below; and

WHEREAS, the City owns the High Line and has converted it into a publicly accessible open space; and

WHEREAS, the applicant states that it is adjacent to the Gansevoort Historic District, but not within it and that it is located within the New York State and National Register of Historic Places Gansevoort Historic District; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the High Line, which cuts diagonally across the site, reduces the developable lot area, and contributes to the irregular-shape of the developable portion of the site; and (2) the subsurface conditions including poor soil and contamination; and

WHEREAS, as to the presence of the High Line and the site's irregular shape, the applicant notes that the High Line crosses diagonally over the eastern edge of the site, overlapping approximately ten percent of its area; and

WHEREAS, the applicant notes that no foundation work may take place in the area occupied by the High Line; and

WHEREAS, additionally, the applicant asserts that the physical constraints imposed by the High Line require the building to be narrower and taller than would otherwise be necessary on an unencumbered lot of its size; and

WHEREAS, the applicant asserts that the irregular shape with three separate street frontages and 50 percent of its interior lot line border traversed by the High Line contribute to premium construction costs and site inefficiencies; and

WHEREAS, further, the applicant notes that the northern half of the site beyond the centerline of the block is only 75 feet deep, the shallowest site on the block; and

WHEREAS, the applicant states that the shallow depth and the setback requirements result in small floor plates above the initial setback for an as of right building; and

WHEREAS, the applicant provided a floor plate study which reflects that the functional floor plate area is reduced to widths of 21 feet and 17 feet above the initial setback; and

WHEREAS, the applicant compares this to an as-of-right building on a site without the High Line and office use floor plates could reach approximately 22,000 sq. ft. compared to 12,878 sq. ft. for the proposed; and

WHEREAS, as to the uniqueness of the condition, the applicant asserts that large portions of the Special West Chelsea District north of West 16th Street were rezoned from M1-5 to commercial districts in which residential use is permitted at base FARs ranging from 5.0 to 7.5, up to 6.0 to 10.0, with bonuses; and

WHEREAS, the applicant notes that many West Chelsea District sites are also permitted to transfer unusable floor area

to other sites; and

WHEREAS, the applicant asserts that the site is the last undeveloped parcel surrounding the Washington Grasslands section of the High Line, which stretches from West 12th Street to West 13th Street; and

WHEREAS, the applicant states that every other site is either completely covered by the High Line or not a soft site; and

WHEREAS, the applicant states that the waivers are required to offset premium costs associated with construction on the irregularly-shaped site traversed by the High Line and to allow for a more efficient building design that provides for the building mass to be pulled away from the High Line and towards Tenth Avenue; and

WHEREAS, several of the High Line's support columns extend to grade within the boundaries of the subject site, such that any use below it is limited; and

WHEREAS, the applicant states that due to the physical constraints posed by the High Line, a resultant as-of-right building would provide an inefficient building envelope, requiring an irregularly-shaped footprint; and

WHEREAS, further, the High Line limits the applicant's ability to position the building on the site, thus the applicant is unable to distribute the bulk within a complying envelope that has both reasonably-sized and uniform floor plates, due to the presence of the High Line across ten percent of the site; and

WHEREAS, the applicant states that compliance with the rear yard regulations would not only result in irregular and less marketable floor plates, but would also leave a small, isolated yard area at the northeast corner of the subject site that would be difficult to use and maintain; and

WHEREAS, the applicant further states that much of the subject rear yard is already encumbered by the High Line, and that because the proposed building will not span the High Line, light and air will be provided to occupants of the building and neighboring buildings; and

WHEREAS, the applicant represents that even with the bulk waivers, the building is taller and narrower than a building on a site not traversed by the High Line due to the reduced developable portion of the site; and

WHEREAS, the applicant represents that larger floor plates are required to achieve greater efficiency, as the small size of the as-of-right floor plates make it difficult to amortize construction costs; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by contamination and poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant states that its Phase I Report reflects that a gas station north of the site across West 14th Street has had a gasoline spill, with gasoline-related contaminants remaining in the soil and groundwater at significant concentration; and

WHEREAS, the applicant states that due to high water table conditions at the site and the need for dewatering during excavation and construction, contaminated water will be

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drawn up through the subsurface and will require costly treatment; and

WHEREAS, the applicant states that the groundwater contamination associated with the gasoline spill will require a vapor barrier and a sub-slab depressurization system as part of the foundation design; and

WHEREAS, the applicant represents that there are at least two unregistered underground storage tanks (USTs) located under the Tenth Avenue sidewalk, which must be decommissioned and removed; and

WHEREAS, the applicant states that New York State Department of Environmental Conservation assigned a spill number related to the USTs and the Phase II reflects that approximately 200 tons of soil must be excavated from the site; and

WHEREAS, additionally, the applicant states that the existing buildings contain refrigerant piping lining the walls and other potential hazardous materials that require special handling and disposal; and

WHEREAS, the applicant states that the site is burdened by poor soil conditions that require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant stating that soil borings indicate that sand is located on the site in the area and is likely liquefiable; and

WHEREAS, accordingly, the applicant states that the piles will likely need to extend through this liquefiable zone and that pile design cannot rely on friction between the soil and pile within the liquefiable zone; such piles are longer and more costly than typical piles for comparable sites in the area; and

WHEREAS, the applicant states that the adjacent buildings to the west and north will require underpinning which, due to the poor soil conditions, will likely involve drilled piles spaced every eight feet, with the foundations of the adjacent structures supported on new grade beams cast against/under the existing foundations and spanning between the new piles; and

WHEREAS, as to the uniqueness of the soil conditions, the applicant states that although a similar zone of probable liquefaction exists nearby, other recent construction such as the Standard Hotel is within a "liquefaction unlikely zone;" and

WHEREAS, the applicant states that the Standard Hotel is supported on drilled micro-piles that obtain capacity via friction in the sand layer and the columns that support the hotel are supported by higher capacity drilled mini caissons bearing in the bedrock; but, in contrast, the piles for the subject building would have to extend through the liquefiable zone and require piles that are longer and more costly than comparable piles on the Standard Hotel site; and

WHEREAS, in support of these assertions, the applicant submitted copies of soil reports related to the variance for 437-447 West 13th Street under BSA Cal. No. 314-08-BZ in 2009 and the Standard Hotel; and

WHEREAS, the applicant asserts that the requested waivers are required to allow for a more efficient building with more rentable office area at a complying FAR; and

WHEREAS, the applicant states that the design with higher floor to ceiling heights and a greater percentage of perimeter office area, which allows the building to generate sufficient income to overcome the premium construction costs of approximately \$6.3 million and inefficiencies associated with the unique conditions of the site; and

WHEREAS, as to the uniqueness of these soil conditions, the applicant's research reflects that recent developments in the vicinity of the site were either able to utilize previously existing building foundations for the new construction, or were not located in a probable liquefiable zone, and therefore could use shorter piles than the subject site; and

WHEREAS, the High Line Building asserts that the West 13th Street variance, which relied on certain similar hardship conditions as the subject site, undermines the applicant's claims of uniqueness; and

WHEREAS, the Board disagrees, noting that a finding of uniqueness, does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see *Douglaston Civ. Assn. v. Klein*, 51 N.Y.2d 963, 965 (1980)); and

WHEREAS, based upon the above, the Board finds that the presence of the High Line, the irregular shape of the developable portion of the lot, and the poor soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study that analyzed: (1) a complying commercial development on the subject lot; (2) the original 6.68 FAR commercial development with height and setback waivers; (3) a complying commercial development on a lot without a hardship; (4) a lesser variance scenario with only an FAR waiver; and (5) a lesser variance scenario with only height and setback waivers; and

WHEREAS, the applicant concluded that only the 6.68 FAR scenario would realize a reasonable rate of return; and

WHEREAS, in response to the Board's concerns, the applicant revised its analysis to include first a 6.18 FAR scenario and ultimately the proposed 5.0 FAR scenario; and

WHEREAS, the Board also raised concerns about assigning premium costs to the proposed design choices not associated with the hardship at the site; and

WHEREAS, in response, the applicant excluded any premium costs associated with specific design choices; and

WHEREAS, the High Line Building submitted a financial analysis which questioned the applicant's conclusions including, specifically, the capitalization rate, the cost valuations and the underlying formulas; and

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WHEREAS, in response, the applicant notes that due to the risk in speculative commercial development, a higher, more conservative, capitalization rate is appropriate; the applicant states that its data source is derived from surveys of investors in similar development projects; and

WHEREAS, the applicant concluded that none of the as-of-right scenarios would result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, the Board has reviewed the applicant's revised analysis and assumptions and finds that they are consistent with financial analyses that the Board has accepted for similar variance applications; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, as to bulk, the applicant represents that the proposed height of 175 feet to the roof of the tenth floor and 199 feet to the top of the rooftop mechanicals and 5.0 FAR are compatible with the neighborhood character; and

WHEREAS, the applicant notes that 5.0 FAR is permitted pursuant to underlying zoning district regulations; and

WHEREAS, the applicant notes that the Standard Hotel, an 18-story hotel building located immediately south of the subject site is built to a height of 271 feet; and

WHEREAS, the applicant represents that the scale and bulk of the proposed building is similar to that of the Standard Hotel and the High Line Building, a 14-story retail office building northwest of the project site, with a height of 221 feet; and

WHEREAS, the applicant asserts that the proposed design is more compatible with the surrounding area than a complying building would be as it will protect easterly and southerly light and air to this segment of the High Line and protects southwesterly light, air, and views for this section of the High Line; and

WHEREAS, the applicant states that although the Environmental Assessment Statement does not predict any significant environmental impacts to the High Line from construction at the site due to the fact that the Washington Grasslands area is planted with shade-tolerant grasses and flowers, the applicant proposes to carve out a portion of the building to maintain more daylight on the High Line than would be provided by the complying design without a carve out; and

WHEREAS, the applicant notes that the proposed design sets back the portion of the building closest to the High Line to preserve the light and air access; and

WHEREAS, the applicant states that its engineering consultant performed a study with three-dimensional models of the proposal, an as-of-right building; and a building with a complying setback/non-complying FAR building to determine the annual potential for solar exposure; and

WHEREAS, the applicant states that the study depicts the total number of hours of direct sunlight that could potentially reach the Washington Grasslands section under each scenario and concluded that the as-of-right and FAR variance buildings had more significant impact on the High Line than the proposal which shifts the bulk of the building to the Tenth Avenue frontage and includes an angled carve-out on the lower levels; and

WHEREAS, the applicant notes that the height and setback waivers are primarily attributed to the design which pulls the bulk of the building off of the High Line and onto Tenth Avenue, a wide street; and

WHEREAS, as noted, the majority of the required rear yard at the interior corner of the site is actually traversed by the High Line and only a very small portion remains that would be impractical to remain undeveloped; and

WHEREAS, due to the site's location within the State/National Register Gansevoort Market Historic District, the Landmarks Preservation Commission (LPC) confirmed its review of the proposed demolition of the existing buildings on the site by letter dated December 13, 2013; and

WHEREAS, the High Line Building raised concerns that the applicant has not established a context for the FAR or building height and that a proposed outdoor commercial space would not be compatible with the High Line; and

WHEREAS, the Board is not persuaded by the applicant's assertions and finds that the applicant has established a context for the proposed FAR and building height; specifically, the Board notes that the revised proposal for 5.0 FAR complies with zoning district regulations and that, as noted above, the High Line Building is among those with heights greater than 199 feet in the immediate vicinity; the Whitney Museum also has a proposed height of 199 feet; and

WHEREAS, the Board notes that the as-of-right building could have greater impact on the High Line Building by obscuring lot line windows and reaching a height of 267 feet; and

WHEREAS, in contrast, the proposed building sets back from the High Line Building by approximately 16 feet along its western façade; and

WHEREAS, as to the proposed outdoor commercial space, the Board notes that it is a conforming use in the zoning district and that the height of the outdoor terrace was designed to be compatible with the High Line and only requires a waiver for the portion that is within the required rear yard; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent

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properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the High Line, the irregularity of the subject lot, and the subsurface soil conditions on the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a building with a floor area of floor area of 157,280 sq. ft. (6.68 FAR), which required a waiver of the FAR due to the zoning district maximum of 5.0 FAR; and

WHEREAS, the High Line Building raised concerns that as the FAR was reduced, the height should also have been reduced in order to reflect the minimum variance; and

WHEREAS, the Board notes that the applicant does not seek a height waiver and that the proposed building height is 20 to 45 feet lower than that of the High Line Building; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA048M, dated May 5, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the site is located in the State/National Register Gansevoort Market Historic District, and the buildings on the site are to be demolished for the proposed project; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) has reviewed the Environmental Assessment Statement (“EAS”) and the Historical Documentation Alternatives Analysis and Mitigation Plan, dated May 2, 2014 and concurs with the findings that there are no feasible or prudent alternatives to demolition; and

WHEREAS, LPC has requested a Historic American Building Survey (“HABS”) Level II documentation for buildings to be demolished on the site and design review of the proposed new building; and

WHEREAS, according to the EAS and the September 2011 Remedial Action Plan, the site has been submitted for entry into the New York City Brownfield Cleanup Program

administered by the Office of Environmental Remediation (“OER”); and

WHEREAS, based on the level of site contamination and the applicant’s proposal to construct subject to BCP approval, the Department of Environmental Protection recommends that an E designation for hazardous materials be placed on the site as part of the approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for rear yard, height and setback, and sky exposure plane regulations contrary to ZR §§ 43-12, 43-311, 43-312, and 43-43, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received March 19, 2014”– (21) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum height of 175 feet to the roof of the tenth floor; a maximum total height of 199 feet, including rooftop mechanicals; and a maximum total floor area of 117,705 sq. ft. (5.0 FAR), as reflect on the BSA-approved plans;

THAT prior to the issuance by DOB of permits for demolition of the buildings on the site, LPC will have reviewed and approved a scope of work for HABS documentation and reviewed the design of the proposed building;

THAT an E designation (E-334) is placed on the subject site to ensure proper hazardous materials remediation;

THAT prior to the issuance by DOB of permits that involve any soil disturbance, the applicant will receive approvals from OER for the hazardous materials remediation plan and construction-related health and safety plan;

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 substantial construction shall be completed in accordance with ZR § 72-23;

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

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Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 13, 2014.

252-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eli Schron, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R-2 zoning district. PREMISES AFFECTED – 1221 East 22nd Street, east side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated August 28, 2013, acting on DOB Application No. 320835209, reads in pertinent part:

Proposed floor area ratio is contrary to ZR 23-141;

Proposed open space ratio is contrary to ZR 23-141;

Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 73-03 and 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, with continued hearings on April 1, 2014 and April 29, 2014, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of the application; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the site has 60 feet of frontage along East 22nd Street and 6,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 2,728 sq. ft. of floor area (0.45 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to increase the floor area of the home from 2,728 sq. ft. of floor area (0.45 FAR) to 6,437 sq. ft. (1.07 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 165.75 percent to 56.21 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant also seeks to decrease its rear yard depth to from 33’-9½” to 22’-4” (a rear yard with a minimum depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed 1.07 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this statement, the applicant submitted a study of homes in the immediate vicinity (three of the four adjacent blocks and the subject block); according to the study, 17 homes have an FAR of 1.0 or greater, including six that have an FAR of 1.07 or greater and eight that were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the compatibility of the height of the proposed home with the existing homes along East 22nd Street; and (2) the proposed canopy; and

WHEREAS, in response, the applicant amended its plans to: (1) reduce the proposed building height from 38’-11¾” to 36’-0”; and (2) note that the canopy is subject to DOB approval; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-03 and 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to

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the objections above-noted, filed with this application and marked "Received April 14, 2014"–(17) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,437 sq. ft. (1.07 FAR), a minimum open space ratio of 56.21 percent, side yards with minimum widths of 5'-0" and 10'-2", a minimum rear yard depth of 22'-4", and a maximum building height of 36'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 13, 2014.

253-13-BZ

APPLICANT – Eric Palatnik, P.C., for Miyer Yusupov, owner.

SUBJECT – Application August 30, 2013 – Special Permit (§73-621) for the enlargement of an existing two-story, two-family home, contrary to floor area (§23-141B) regulations. R4B zoning district.

PREMISES AFFECTED – 66-31 Booth Street, north side of Booth Street between 66th and 67th Avenue, Block 3158, Lot 96, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0

Absent: Commissioner Montanez1
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings ("DOB"), dated August 6, 2013, acting on DOB Application No. 420867887, reads in pertinent part:

Proposed enlargement of existing three-story attached two-family dwelling in an R4B zoning district exceeds permitted floor area by 180 sq. ft., contrary to Sections 23-141 and 54-31; and

WHEREAS, this is an application under ZR §§ 73-03 and 73-621, to permit, within an R4B zoning district, the enlargement of an existing two-family home, which does not comply with the zoning requirements for floor area, contrary

to ZR §§ 23-141 and 54-31; and

WHEREAS, a public hearing was held on this application March 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 29, 2014, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Booth Street, between 66th Avenue and 67th Avenue, within an R4B zoning district; and

WHEREAS, the site has 20 feet of frontage along Booth Street and 2,000 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a three-story, two-family home with 1,868.76 sq. ft. of floor area (0.93 FAR); and

WHEREAS, the applicant proposes to increase the floor area of the building from 1,868.76 sq. ft. of floor area (0.93 FAR) to 1,972.99 (0.99 FAR); the maximum permitted FAR of the site is 0.90; and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted an excerpt from Volume 9 of the Queens Sanborn Map (covering 1982-1984) to demonstrate that the building existed as a residence well before June 30, 1989, which is the operative date within the subject R4B district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building, provided that the proposed FAR does not exceed 110 percent of the maximum permitted (0.90 FAR); and

WHEREAS, the applicant represents that the proposed lot coverage (0.99 percent) is 110 percent of the maximum permitted (0.90 FAR); and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, based on its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposal does not interfere with any pending public improvement project; and

WHEREAS, at hearing, the Board noted that the proposed FAR calculations, including the noted deductions,

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are subject to DOB approval; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR §§ 73-03 and 73-621 to permit, within an R4B zoning district, the enlargement of an existing two-family home, which does not comply with the zoning requirements for floor area, contrary to ZR §§ 23-141 and 54-31; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 16, 2014"- (3) sheets; and on further condition:

THAT the parameters of the proposed building will be limited to: three stories, two dwelling units, a maximum floor area of 1,972.99 (0.99 FAR), a maximum building height of 27'-0", 41 percent lot coverage, and a minimum rear yard depth of 39'-9", as per the BSA-approved plans;

THAT the FAR calculations will be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT significant construction will proceed in accordance with ZR §§ 72-23 and 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 13, 2014.

263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for deferred decision.

347-12-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, Mitchell S. Ross, Esq., for X & Y Development Group, LLC., owner.

SUBJECT – Application December 26, 2012 – Variance (§72-21) to permit a transient hotel and community facility use (*North Queens Medical Center*), contrary to use regulations (§22-10), and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport. R7-1 (C1-2) zoning district.

PREMISES AFFECTED – 42-31 Union Street, east side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11, 14, 15, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision, hearing closed.

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of a physical culture establishment (*The Physique*). C1-4/R7A zoning district

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for adjourned hearing.

216-13-BZ & 217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

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PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for continued hearing.

225-13-BZ

APPLICANT – Eric Palatnik, P.C., for Yitta Neiman, owner.

SUBJECT – Application July 25, 2013 – Variance (§72-21) to permit the development of a three-family, four-story residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 810 Kent Avenue, east Side of Kent Avenue between Little Nassau Street and Park Avenue, Block 1883, Lot 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

233-13-BZ

APPLICANT – Law office of Fredrick A. Becker, for Kayvan Shadrouz, owner.

SUBJECT – Application August 12, 2013 – Special Permit (§73-622) for an enlargement of an existing single family residence, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2413 Avenue R, North side of Avenue R between East 24th Street and Bedford Avenue. Block 6807, Lot 48. Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

284-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 168-42 Jamaica LLC, owner; 168 Jamaica Avenue Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and the first floor of the building. R6-A/C2-4 (Downtown Jamaica) zoning district.

PREMISES AFFECTED – 168-42 Jamaica Avenue, south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot 22, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for continued hearing.

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a three-story, six-unit residential building, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for deferred decision.

316-13-BZ

APPLICANT – Slater & Beckerman, PC, for 210 Joralemon Street Condominium, owner; Yoga Works, Inc., lessee.

SUBJECT – Application December 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Yoga Works*) in the cellar and first floor of the building. C5-2A (Special Downtown Brooklyn) zoning district.

PREMISES AFFECTED – 210 Joralemon Street, southeast corner of Joralemon Street and Court Street, Block 266, Lot 7501 (30), Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4

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Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

16-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saul Greenberger & Rochelle Greenberger, owners.

SUBJECT – Application January 27, 2014 – Special Permit (§73-621) for the enlargement of an existing one family residence, contrary to floor area, lot coverage and open space (§23-141). R3-2 zoning district.

PREMISES AFFECTED – 1648 Madison Place, west side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

20-14-BZ

APPLICANT – Sandy Anagnostou, Assoc, AIA, for 310-312 Owners Corp. LLC, owner; John Vatis, NHMME, lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to allow the operation of a physical culture (*Massage Envy*) establishment on the first floor of an existing mixed use building. C1-9A zoning district.

PREMISES AFFECTED – 312 East 23rd Street, south side of East 23rd Street 171' east from the corner of 2nd Avenue and East 23rd Street, Block 928, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #10M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson ...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

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*CORRECTION

These resolutions adopted on April 8, 2014, under Calendar No. 207-13-BZ and printed in Volume 99, Bulletin No 15, is hereby corrected to read as follows:

207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated March 14, 2014, acting on DOB Application No. 320864695, reads in pertinent part:

The proposed enlargement creates new non-compliances, as follows:

1. Increases the existing degree of non-compliance with reference to floor area and is contrary to sections 23-141;
2. Increases the existing degree of non-compliance for floor area ratio and is contrary to sections 23-141;
3. Increases the existing non-compliance for wall height contrary to sections 23-631;
4. Increase the existing non-compliance for rear yard and is contrary to sections 24-37; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), perimeter wall height, and rear yard, contrary to ZR §§ 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has a lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 3,612 sq. ft. (0.9 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks an increase in the floor area from of 3,612 sq. ft. (0.9 FAR) to 4,044.8 sq. ft. (1.01 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 2,400 sq. ft. (0.6 FAR); and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 25’-9” to 20’-0”; a minimum rear yard depth of 30’-0” is required; and

WHEREAS, finally, the applicant seeks to maintain and extend its existing, non-complying perimeter wall height of 24’-0”; the maximum permitted perimeter wall height is 21’-0”; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal to or less than the height of the adjacent building’s non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height (24’-0”) is equal to the height of both adjacent buildings’ non-complying perimeter walls facing the street 24’-0”); the applicant submitted the adjacent buildings’ certificates of occupancy, which indicate that they and the subject building are substantially identical and were constructed at the same time with the same perimeter wall height facing the street; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that the proposed 1.01 FAR is consistent with the bulk in the surrounding area and that, within a 200-ft. radius of the site, every home has been enlarged in recent years; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 1, 2014"- (9) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,044.8 sq. ft. (1.01 FAR), a maximum perimeter wall height of 24'-0", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

The resolution have been amended to correct the floor area which read: ...“3,910 sq. ft. (0.98 FAR)”. Now reads: ...“4,044.8 sq. ft. (1.01 FAR)” Corrected in Bulletin No. 20, Vol. 99, dated May 21, 2014.

*CORRECTION

The resolution adopted on April 29, 2014, under Calendar No. 246-13-BZ and printed in Volume 99, Bulletin Nos. 16-18, is hereby corrected to read as follows:

246-13-BZ

CEQR #14-BSA-025K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings ("DOB"), dated July 22, 2013, acting on DOB Application No. 320590339, reads in pertinent part:

1. Floor area in R6B lot portion exceeds the maximum permitted; contrary to ZR 24-11;
2. Enlargement in the required rear yard is not permitted; contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the horizontal enlargement of the basement and first story of a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) that exceeds the maximum permitted floor area ratio ("FAR") and does not provide the minimum required rear yard in the R6B portion of the site, contrary to ZR §§ 24-11 and 24-36; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this application is brought on behalf of Lutheran HealthCare, a not-for-profit institution; and

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WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a rectangular interior lot located on the south side of 49th Street between Fifth Avenue and Sixth Avenue, partially within an R6B zoning district and partially within a C4-3A zoning district; and

WHEREAS, the site has 191 feet of frontage along 49th Street, a lot depth of 100.17 feet, and a lot area of 19,131 sq. ft.; and

WHEREAS, the site is divided by a zoning district boundary, with the westernmost ten feet of the site for its full depth is located within a C4-3 zoning district and the remainder of the lot located within an R6B zoning district; and

WHEREAS, the site is occupied by a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) with 35,378 sq. ft. of floor area (1.8 FAR); the facility is operated by Lutheran HealthCare (“LHC”) and known as the Sunset Terrace Family Health Center (“STFHC”); and

WHEREAS, the applicant notes that the facility was completed in 1960 and underwent its only major renovation in 1977; and

WHEREAS, the applicant proposes to enlarge the basement and first story at the rear of the building, which will increase the floor area from 35,378 sq. ft. (1.8 FAR) to 40,912 sq. ft. (2.14 FAR); and

WHEREAS, the applicant states that the basement enlargement will comprise 2,637 sq. ft. of floor area and provide space for offices, staff room, storage and mechanical equipment; the first story enlargement will comprise 2,997 sq. ft. of floor area and will provide space for examination rooms, additional offices, work stations, and restrooms; and

WHEREAS, the applicant states that a variance is requested because the proposed enlargement will exceed the maximum permitted floor area for the site (39,263 sq. ft. (2.05 FAR)) and will extend the existing non-complying rear yard depth of 11 feet for the full width of the building; and

WHEREAS, the applicant notes that LHC, which operates STFHC, has served the ethnically diverse, medically underserved neighborhoods of central and southwest Brooklyn for more than 40 years, and that the official LHC service area includes approximately 700,000 residents (28 percent of the total Brooklyn population); and

WHEREAS, the applicant states that STFHC is facing a large influx of patients due to three factors: (1) the closure or threatened closure of nearby health systems and hospitals, such as Long Island Hospital, Brookdale Hospital, and Interfaith Medical Center; (2) the initiation of the New York Health Home system (under the requirements of the New York State Medicaid Redesign Team), which requires coordination of mental illness treatment with medical treatment; and (3) the implementation of family homeless services; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which, in accordance with ZR § 72-21(a), create practical

difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of community facility use at the site and obsolescence of the building at the site for such use (including the outmoded configuration of its floorplates); and (2) the programmatic needs of LHC; and

WHEREAS, as noted above, the applicant states that LHC has been providing health services at the site for decades in a building that was constructed in 1960; as such, community facility use at the site is well-established; and

WHEREAS, the applicant notes that the building was constructed without a cellar; therefore, it must use above-grade spaces for common below-grade uses such as storage of materials and mechanical equipment; and

WHEREAS, in addition, the applicant states that the building was last renovated in 1977 and its layouts include redundancies and inefficiencies (such as a single entrance for all patients), which interfere with LHC’s ability to provide quality health care; and

WHEREAS, the applicant states that the building must expand to satisfy LHC’s programmatic needs, including providing: (1) proper separation of offices, storage space, and staff rooms from patient services; (2) expansion of the primary care areas; (3) establishment of dental care program space; (4) expansion of behavioral health patient areas; (5) separation of patients by health care need; and (6) for the elimination of the joint reception area, which is undesirable given the diversity of the services offered by LHC; and

WHEREAS, the applicant also states that remaining in the building is critical to the care STFHC provides to the surrounding community because many of its patients live nearby and cannot travel long distances for services; and

WHEREAS, the applicant contends that providing some services at the site and others offsite would substantially interfere with patient care, require duplication of non-patient spaces, services, and staff, and be inconsistent with the recommendations of the New York State Medicaid Redesign Team; and

WHEREAS, similarly, the applicant represents that relocating the facility entirely is not possible because there are no comparable buildings or sites within Sunset Park and that the vast majority of lots in the area (both vacant and occupied) have lot areas of approximately 2,000 sq. ft.—well below the size that would be needed to accommodate a suitable building for STFHC; and

WHEREAS, the applicant explored the feasibility of the following as-of-right development scenarios: (1) a three-story rear enlargement for a depth of 14 feet (“Scenario 1”); (2) a four-story enlargement to the west side of the building (“Scenario 2”); and (3) a complete renovation of the entire building, including significant demolition and reconstruction (“Scenario 3”); and

WHEREAS, the applicant states that Scenario 1 would not allow for the additional examination rooms and corridors due to its limited depth and it would not alleviate the entrance bottleneck caused by the single patient entrance; in addition, it

MINUTES

would require the placement of medical examination and dental examination rooms on separate levels and would prevent the consolidation of staff spaces and instead separate such spaces by several stories with only one elevator connecting them; and

WHEREAS, the applicant states that Scenario 2 would result in approximately 60 percent less new program space than the proposal, resulting in a reduction and/or elimination of programs and funding; further, Scenario 2 would require reconfiguration of the boiler room, relocation of an egress stair, and the installation of a new sprinkler system, at significant cost; and

WHEREAS, as for Scenario 3, the applicant represents that it is not viable due to the costs involved and the significant disruptions in patient care; and

WHEREAS, accordingly, the applicant asserts that the building's inefficiencies and LHC's programmatic needs are best addressed with the proposed horizontal enlargement; and

WHEREAS, based upon the above, the Board finds that the history of community facility use at the site and the obsolescence of the building, when considered in conjunction with the programmatic needs of LHC, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since LHC is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the neighborhood is characterized by a mix of low- to medium-density residential, community facility, and, where permitted, commercial uses; and

WHEREAS, the applicant states that the site has been occupied by a medical facility for more than 50 years, that Use Group 4 is permitted as-of-right in the subject zoning districts (R6B and C4-3A), and that the operator of the facility is an organization with significant ties to the community; and

WHEREAS, as to adjacent properties, the applicant states that there are mixed residential and commercial buildings along Fifth Avenue to the west of the site, and residential buildings to the north, east, and south of the site; and

WHEREAS, the applicant states that the proposed enlargement is a continuation of the building's existing, non-complying rear yard depth of 11 feet and that its impact upon the residences to the south is mitigated by the fact that those buildings provide complying rear yards with depths of 30 feet and are separated from the site by a retaining wall and a fence; and

WHEREAS, as to the FAR waiver, the applicant asserts

that while it is modest (the proposal seeks 0.09 FAR greater than is permitted at the site), a noted above, the additional floor area is essential to LHC's ability to carry out its programmatic needs; further, the additional floor area will be located entirely within the rear of the site, will have no impact on the building's overall height, number of stories or appearance from the street, and is within the ten-percent increase in floor area permitted by special permit under ZR § 73-63 (*Enlargement of Non-Residential Buildings*); and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of LHC could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that, per ZR § 72-21(d) the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board also finds that the requested relief is the minimum necessary, in accordance with ZR § 72-21(e); and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-025K, dated August 14, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is resolved, that the Board of Standards and Appeals issues a Negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings

MINUTES

under ZR § 72-21 and grants a variance, to permit, on a site located partially within an R6B zoning district and partially within a C4-3A zoning district, the horizontal enlargement of the basement and first story of a four-story ambulatory diagnostic and treatment health care facility (Use Group 4) that exceeds the maximum permitted floor area ratio (“FAR”) and does not provide the minimum required rear yard in the R6B portion of the site, contrary to ZR §§ 24-11 and 24-36; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received November 26, 2013” –(5) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: a maximum of 40,912 sq. ft. (2.14 FAR) and a minimum rear yard depth of 11’-0”, as indicated on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

The resolution has been amended. Corrected in Bulletin No. 20, Vol. 99, dated May 21, 2014.

BULLETIN

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May 28, 2014

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Tuesday, May 20, 2014**

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11-93-BZ	46-45 Kissena Boulevard, Queens
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DOCKETS

New Case Filed Up to May 20, 2014

104-14-BZ

282 South 5th Street, a through lot having frontage on South 5th Street and Broadway just West of Marcy Avenue., Block 2460, Lot(s) 18, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow the operation of a physical culture establishment (fitness center) on a portion of the ground and second floors of a new building. Located in C4-3 zoning district. C4-3 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 17, 2014, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 17, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

997-84-BZ

APPLICANT – Sheldon Lobel, P.C., for 222 Union Associates, owner.

SUBJECT – Application January 23, 2014 – Amendment (§11-413) proposed changes of use to a mixed use building, with retail (UG 6) on first floor and cellar, and residential (UG 2) on the second through sixth floors. R6A & C1-1/R6A zoning district.

PREMISES AFFECTED – 798-804 Union Street, 6th Avenue and 7th Avenue, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

24-03-BZ

APPLICANT – Warshaw Burstein, LLP, for Cumberland Farms, Ink, owner.

SUBJECT – Application February 26, 2014 – Extension of Term (§11-411) of a previously approved variance which permitted a gasoline service station and an automobile repair facility (Use Group 16) which expired on July 15, 2013; Waiver of the Rules. C1-2R2A zoning district.

PREMISES AFFECTED – 178-02 Union turnpike, intersection formed by Union Turnpike and Surrey Parcel, Block 7227, Lot 29, Borough of Queens.

COMMUNITY BOARD #8Q

271-07-BZ

APPLICANT – Eric Palatnik, P.C., for 217 W.23rd Street LLC., owner; Crunch LLC, lessee.

SUBJECT – Application December 23, 2013 – Amendment of a special permit and variance authorizing a physical culture establishment (*Crunch*) by allowing a change in operator, to extend the term of the previous grant, to extend the time to obtain a Certificate of Occupancy, and for a waiver to permit late and early filing. C2-7A/R8A zoning district.

PREMISES AFFECTED – 215 West 23rd Street, north side of West 23rd Street, 118.75 ft. west of intersection of West 23rd Street and 7th Avenue, Block 773, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner. SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize Affinia Gardens Hotel under MDL Section 120(b) (3) , as provided under recent amendments under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #8M

103-14-A

APPLICANT – Akerman LLP, for 55 Eckford Lots LLC, owner.

SUBJECT – Application May 9, 2014 – Appeal seeking a determination that the owner has obtained a common law vested right to complete construction under the prior R6/M1-1 zoning district regulations. Prior Board grant under Cal. No. 157-07-BZY for 11-332. M1-2/R6B zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford bounded by Driggs Avenue to its north and Engert Avenue to its south, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ZONING CALENDAR

300-12-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Columbia Grammar & Preparatory School, owner.

SUBJECT – Application October 19, 2012 – Variance (§72-21) to permit an enlargement of an existing school building contrary to lot coverage, permitted obstruction in rear yard equivalent, rear yard equivalent, and sky exposure plane. R7-2 zoning district.

PREMISES AFFECTED – 36 West 93rd Street aka 33 West 92nd Street, between Central Park West and Columbus Avenue, Block 1206, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

350-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of a community facility/residential building contrary to §42-00. M3-1

CALENDAR

zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

208-13-BZ

APPLICANT – Issa Khorasanchi, for Kenneth Segal, owner; Dimitriy Brailovskiy, lessee.

SUBJECT – Application July 8, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Fitness Gallery*) located on the second floor of the two story commercial building. C8-1/R4 zoning district.

PREMISES AFFECTED – 1601 Gravesend Neck Road, Gravesend Neck Road, between East 16th and East 17th Street, Block 7377, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

283-13-BZ

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building within an M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

57-14-BZ

APPLICANT – The Law Office of Jay Goldstein, PLLC, for One NY Plaza Co. LLC, owner; Gear Fitness LLC d/b/a Retro Fitness, lessee.

SUBJECT – Application April 10, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*) in the sub-cellar and concourse level of a fifty story commercial building. C5-5(LM) zoning district.

PREMISES AFFECTED – 1 New York Plaza, 114-142 13 Broad Street, 13 South Street, 1-21 Water Street, 49-63 & 54-64 Whitehall Street, Block 4, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 20, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.

SPECIAL ORDER CALENDAR

427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.
SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.
PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

775-85-BZ

APPLICANT – Sheldon Lobel, P.C., for Ivy Cross Island Plaza, owner.
SUBJECT – Application December 18, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of a three-story office building contrary to permitted height and use regulation, which expired on February 24, 2012; Amendment to modify the parking layout, eliminate buffering and eliminate the term of years of the variance; Waiver of the Rules. C1-3/R2 and R2 zoning district.

PREMISES AFFECTED – 133-33 Brookville Boulevard, triangular lot with frontages on Brookville Boulevard, Merrick Boulevard, 133rd Avenue and 243rd Street, Block 12980, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for continued hearing.

142-92-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.
SUBJECT – Application March 20, 2014 – Amendment of a previously approved special permit (§73-48) for a community facility (*New York Methodist Hospital*). The application seeks to amend the approved plans to accommodate required accessory parking in a new ambulatory care facility (BSA Cal #142-92-BZ)

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block 1084, Lot 36, 164, 1001/1002, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for deferred decision.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C. for Joy Kiss Management, LLC, owner; Chen Qiao Huang (Good fortune Restaurant), lessee.

SUBJECT – Application December 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously approved variance (§72-21), which expired on March 20, 2012; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

245-03-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for Allied Enterprises NY LLC, owner; McDonald's Real Estate Company, lessee.

SUBJECT – Application December 26, 2013 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (*McDonald's*), which expired on December 12, 2013. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for continued hearing.

326-09-BZ

APPLICANT – Bryan Cave LLP, for Flushing Commons Property Owner LLC, owner.

SUBJECT – Application April 10, 2014 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-66) permitting the development of four mixed use buildings (*Flushing Commons*) which exceed the height regulations around airports, contrary to ZR (§61-21)

MINUTES

which expires on July 27th 2014. C4-4 zoning district.
PREMISES AFFECTED – 37-10 Union Street aka 38-15 138th Street, portion of the block bounded by 37th Avenue on the north, 39th Avenue on the South, Union Street on the east and 138th Street on west, Block 4978, Lot 25, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

49-11-BZ

APPLICANT – Warsaw Burstein, LLP, for A&G Real Estate, LLC, owner; Barry's Boot camp NYC, LLC, lessee.
SUBJECT – Application February 21, 2014 – Amendment of a previously approved Special Permit (§73-36) which permitted the extension of physical culture establishment. C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, north side of West 20th Street between Sixth Avenue and Seventh Avenue, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

APPEALS CALENDAR

33-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Quentin Road Development LLC, owner.

SUBJECT – Application February 13, 2014 – Appeal challenging the Department of Building's determination regarded permitted community facility FAR, per §113-11 (Special Bulk Regulations for Community Facilities) C4-2 zoning district, C8-2 (OP). C4-2 (OP) zoning district.

PREMISES AFFECTED – 902 Quentin Road, Southeast corner of intersection of Quentin Road and East 9th Street. Block 6666, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision hearing closed.

51-13-A

APPLICANT – Carl A. Sulfaro, for Woodward Avenue Realty, Inc., owner.

SUBJECT – Application January 29, 2013 – Proposed construction of a one story warehouse lying partially within the bed of mapped street. (*Metropolitan Avenue*) contrary to General City Law Section 35. M3-1 zoning district.

PREMISES AFFECTED – 10 Woodward Avenue, southwest corner of Metropolitan Avenue and Woodward Avenue, Block 3393, Lot 49, Borough of Queens.

COMMUNITY BOARD #5Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

59-13-A

APPLICANT – Carl A. Sulfaro, Esq., for Onofrio and Josephine Papia, owners.

SUBJECT – Application February 5, 2013 – Proposed construction of a new one family residence located in the bed of a mapped street contrary to Section 35 of the General City Law. R1-2 zoning district.

PREMISES AFFECTED – 11-30 143rd Place, west side of 143rd Place, 258.57' south of 11th Avenue, Block 4434, Lot 147, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

164-13-A

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse DOB determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to June 10, 2014, at 10 A.M., for deferred decision.

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings’ determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

ZONING CALENDAR

228-13-BZ

CEQR #14-BSA-016M

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 11, 2013, acting on DOB Application No. 121610211, reads, in pertinent part:

Proposed use of portion of the cellar as a Physical Culture Establishment (PCE) is not permitted as of right in C4-7 zoning district and is contrary to ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C4-7 zoning

district and partially within an R8 zoning district, the legalization of an existing physical culture establishment (“PCE”) in the cellar of a 31-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application November 26, 2013, after due notice by publication in the *City Record*, with continued hearings on December 17, 2013, January 28, 2014, March 11, 2014 and April 29, 2014, and then to decision on May 20, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, initially recommended approval of the application; however, by resolution dated February 4, 2014, Community Board 7 recommends disapproval of the application, citing the following primary concerns: (1) the accuracy and completeness of the information provided by the applicant regarding the impact of this particular type of gym and the exercises performed; (2) the lack of analysis of acoustical concerns relating to hammering, percussive, and transmitted vibrations and noise; (3) the short- and long-term impact of the gym activities upon the building structure; and (4) the adequacy of the proposed sound attenuation; and

WHEREAS, City Councilperson Helen Rosenthal recommends disapproval of the application; and

WHEREAS, Manhattan Borough President Gale Brewer submitted testimony regarding the application urging the Board to consider any potential negative impacts; and

WHEREAS, certain members of the surrounding community submitted testimony in support of the application; and

WHEREAS, certain members of the surrounding community, including residents of the subject building, submitted testimony in opposition to the application (the “Opposition”); the Opposition’s primary concerns include those raised by the Community Board as well as (1) the incompatibility of the use with the residential use in the building and in the surrounding area; (2) the transmittal of noise and vibration throughout the building; (3) whether representative weights had been used for the acoustical studies and that a weight limit be set for weight-dropping activities; (4) the inclusion of PCE use in the R8 zoning district portion of the site; (5) the extension of the use onto the sidewalk and street outside the building; (6) an increase in noise associated with competitions or other events; (7) the fact that the PCE has commenced operation prior to obtaining its special permit; (8) the operation of other Cross Fit PCEs in the City; and (9) whether proper notification of the hearing was performed and whether all submissions were properly distributed; and

WHEREAS, the Opposition states that if the special permit is granted, consideration be given to (1) a term limited to two years from the July 2013 commencement of operations; and (2) limitations on the hours of operation and the hours that weights can be dropped; and

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WHEREAS, the subject site is located on the northeast corner of the intersection of Columbus Avenue and West 67th Street, partially within a C4-7 zoning district and partially within an R8 zoning district, within the Special Lincoln Square District; and

WHEREAS, the site has 100.42 feet of frontage along Columbus Avenue, 150 feet of frontage along West 67th Street, and 21,088 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 31-story mixed residential and commercial building; and

WHEREAS, the PCE occupies 6,461 sq. ft. of floor space in the cellar within the C4-7 zoning district portion of the site; and

WHEREAS, the PCE will be operated as CrossFit; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, at hearing, in response to the Opposition's concerns and based on its own observations from site visits and review of the application, the Board directed the applicant to provide additional information on the following issues: (1) whether notification and dissemination of submissions was completed in accordance with the Board's Rules; (2) whether the PCE had commenced to operate; (3) whether the PCE use was confined to the C4-7 zoning district portion of the site; (4) the conclusions of the acoustical studies and the proposal to include sound attenuation measures; (5) the proposed hours of operation and confirmation that the facility would be closed to all outside of those hours; and (6) whether events or competitions would be held on site; and

WHEREAS, as to notification, the applicant informed the Board that proper notification of the hearing had mistakenly not been performed prior to the first hearing and thus the Board continued the public hearing to a new date subsequent to the performance of proper notification; and

WHEREAS, similarly, the applicant corrected any omissions of submission transmittal to required parties in satisfaction of the Board's Rules for proof of service of submissions and supplementary materials pursuant to § 1-10.7; and

WHEREAS, as to operations, the applicant acknowledged that it had begun to phase in introductory sessions in July 2013, but only commenced PCE operations in November 2013; and

WHEREAS, as to the location of the PCE, the applicant revised its plans to reflect that no portion of the PCE will

operate within the R8 portion of the site and submitted photographs of the installation of a wall between the C4-7 portion of the site and the R8 portion of the site; and

WHEREAS, as to the concerns about sound and attenuation, the applicant's acoustic consultant performed studies from the fifth-floor commercial space just below the first floor of residential use and concluded that any noise effects are well within the City's Noise Code regulations; and

WHEREAS, the Board notes that the Opposition calls the applicant's acoustical study into question and states that it has performed its own, but has not offered any evidence to refute the applicant's findings; and

WHEREAS, further, the Board notes that the residential use in the building does not begin until the sixth floor and is thus separated from the cellar PCE use by five floors of commercial use and the Board finds the applicant's acoustical study to be credible and consistent with such studies that the Board has accepted with other PCE applications; and

WHEREAS, the Board notes that the applicant initially proposed attenuation measures, such as padded fitness flooring and sound-foam panels and that its acoustic consultant determined that those attenuation measures, without the raised flooring system, establish attenuation to a degree that allows the proposal to comply with Noise Code regulations; and

WHEREAS, however, the applicant now proposes to include the padding and a raised floor system throughout the PCE space, as reflected on the revised plans; and

WHEREAS, as to the hours of operation, the applicant states that it will agree to a limit use to the hours proposed by the Board and will not allow any PCE use in the facility outside of those hours; and

WHEREAS, the applicant stated that the PCE seeks to operate from 6:00 a.m. to 10:00 p.m. every day; and

WHEREAS, the Board considered the request and the concerns of the Opposition and concluded that 6:00 a.m. to 9:30 a.m., Monday through Friday and 9:00 a.m. to 6:00 p.m., Saturday and Sunday was more appropriate hours; and

WHEREAS, as to the Opposition's concern about high intensity use including events and competitions, the applicant responded that it will not hold such activities on site; and

WHEREAS, the Board notes that the size of the PCE at approximately 6,500 sq. ft. is on the smaller side of the PCEs it has reviewed and agrees that the space does not lend itself to such use and is thus satisfied that the applicant has agreed not to hold them onsite; and

WHEREAS, in response to the Opposition's concerns regarding the potential for the PCE's operations to damage the structure of the building, the applicant provided a report from the building's structural engineer who designed the existing structural system, which concludes that the building can accommodate the proposed use; and

WHEREAS, the Board reviewed the submissions made by the building's engineer but concludes that the questions of structural integrity are properly before the Department of Buildings and notes that for the Board's purposes, the report is

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sufficient; and

WHEREAS, the Board notes that no reports have been introduced to the record which challenge the applicant's engineer's conclusions regarding the building's structural sufficiency; and

WHEREAS, as to the term, the Board notes that given the significant number of concerns including questions about the efficacy of the proposed sound attenuation measures and the applicant's commencement of operations and after hours use of the space, the Board deems a two-year term from the date of this grant to be appropriate; and

WHEREAS, finally, the Board notes that concerns about the use of other Cross Fit facilities in the City are not germane to the analysis for the subject site as each site has a unique set of building conditions; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA016M dated July 15, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and

makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially within a C4-7 zoning district and partially within an R8 zoning district, the legalization of an existing physical culture establishment (PCE) in the cellar of a 31-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 24, 2014" – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on May 20, 2016;

THAT the PCE use is limited to the C4-7 zoning district portion of the site; the wall separating the C4-7 portion of the site from the R8 zoning district portion of the site will be maintained, as reflected on the BSA-approved plans, and no PCE use will be permitted in the R8 portion of the site;

THAT the hours of operation for the PCE will be limited to Monday through Friday, from 6:00 a.m. to 9:30 p.m. and Saturday and Sunday from 9:00 a.m. to 6:00 p.m.;

THAT no private training or other PCE activity will be held outside of the noted hours of operation;

THAT competitions or other similarly-attended events are prohibited;

THAT sound-attenuating measures, including a raised flooring system and padded fitness flooring will be installed and maintained throughout the entire PCE space and sound-foam panels will be installed and maintained along certain walls, as reflected on the approved plans;

THAT the sound attenuation measures will be installed by November 20, 2014;

THAT the use of the facility will comply with New York City Noise Code regulations;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT DOB will review and approve occupancy loads, including as related to equipment use;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the

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Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 20, 2014.

275-13-BZ

CEQR #14-BSA-146M

APPLICANT – Warshaw Burstein, LLP, for Kedzkiidz Realty LLC., owner; Antonaccio-Crous, LLC, lessee.

SUBJECT – Application September 26, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Bikram Yoga Soho*). M1-5 zoning district.

PREMISES AFFECTED – 404-406 Broadway, east side of Broadway south of its intersection with Canal Street in TriBeCa, Block 196, Lot 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated September 18, 2013, acting on DOB Application No. 120417487, reads, in pertinent part:

Physical culture establishment is being proposed [which] is not permitted as-of-right in a manufacturing district contrary to section 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5 zoning district, within the Tribeca East Historic District, the legalization of an existing physical culture establishment (“PCE”) operating in a portion of the third story of a three-story commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 29, 2014, and then to decision on May 20, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Broadway between Walker Street and Lispenard Street, within an M1-5 zoning district, within the Tribeca East Historic District; and

WHEREAS, the site has 52.5 feet of frontage along Broadway and 5,249 sq. ft. of lot area; and

WHEREAS, the site is occupied by two, three-story

buildings (known as 404 and 406 Broadway), which the applicant represents share a common stair and elevator and operate together under a single Certificate of Occupancy; and

WHEREAS, the PCE occupies 2,907 sq. ft. of floor area on the third story of the buildings; and

WHEREAS, the PCE is operated as Bikram Yoga Studio; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 6:30 a.m. to 8:30 p.m. and Saturday and Sunday, from 10:00 a.m. to 5:30 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, on October 14, 2010, the Landmarks Preservation Commission (“LPC”) issued a Certificate of Appropriateness for certain renovations to 406 Broadway and on March 13, 2013, LPC issued a Certificate of No Effect for interior work related to the PCE; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) the reason(s) for the active Stop Work Order at the site; and (2) whether the proposed signage was approved by LPC; and

WHEREAS, in response, the applicant stated that the Stop Work Order is related to audits of open permit applications; the applicant represents that all objections raised during the course of the audit have been resolved except the objection relating to the subject PCE; the applicant also notes that the issuance of the subject special permit will resolve the only outstanding objection and result DOB’s rescission of the Stop Work Order; and

WHEREAS, as to the proposed signage, the applicant represents that it is not subject to LPC approval because of its location; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit since December 15, 2013; and

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WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA146M dated February 4, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within an M1-5 zoning district, within the Tribeca East Historic District, the legalization of an existing PCE operating in a portion of the third story of a three-story commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 6, 2014" – Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on December 15, 2023;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 20, 2014.

1-14-BZ
CEQR #14-BSA-094M

APPLICANT – Law Office of Fredrick A Becker, for CPT 520 W 43 Owner LLC c/o Rose Associates, owner; Ewing Massage Enterprise, LLC dba Massage Envoy, lessee.

SUBJECT – Application January 6, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Massage Envoy*). C6-4 zoning district.

PREMISES AFFECTED – 525 West 42nd Street, Northerly side of West 42nd Street 325 feet easterly of Tenth Avenue. Block 1071, Lot 42. Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings ("DOB"), dated December 9, 2013, acting on DOB Application No. 121236652, reads, in pertinent part:

Proposed physical culture establishment is not an as-of-right use; contrary to ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4 zoning district, within the Special Clinton District, the operation of a physical culture establishment ("PCE") in a portion of the first story of a 33-story mixed residential and commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on May 20, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is an interior lot with through-lot portions located on the north side of West 42nd Street and the south side of West 43rd Street between 10th Avenue and 11th Avenue, within a C6-4 zoning district,

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within the Special Clinton District; and

WHEREAS, the site has approximately 167 feet of frontage along West 43rd Street, 75 feet of frontage along West 42nd Street, and 24,269 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 33-story mixed residential and commercial building; the building has two segments: a 33-story portion with frontage along West 43rd Street and a two-story portion with frontage along West 42nd Street; and

WHEREAS, the proposed PCE will be located on the ground floor of the two-story building segment and will occupy 3,600 sq. ft. of floor area; the applicant represents that the second story of the two-story building segment will contain a gym and other accessory uses and amenities for the residences of the subject building; and

WHEREAS, the PCE will be operated as Massage Envy; and

WHEREAS, the applicant represents that the services at the PCE include spa services and massage by New York State-licensed masseurs and masseuses; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 7:00 a.m. to 12:00 a.m. and Sunday, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA094M dated December 30, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C6-4 zoning district, within the Special Clinton District, the operation of a PCE in a portion of the first story of a 33-story mixed residential and commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 7, 2014” – Three (3) sheets and “Received April 30, 2014” – One (1) sheet; and *on further condition*:

THAT the term of the PCE grant will expire on May 20, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation for the PCE will be limited to Monday through Saturday, from 7:00 a.m. to 12:00 a.m. and Sunday, from 7:00 a.m. to 10:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May

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20, 2014.

2-14-BZ

CEQR #14-BSA-095M

APPLICANT – Law Office of Fredrick A.Becker, for SP101 W 15 LLC, owner; BFX West 15th Street LLC dba BFX Studio, lessee.

SUBJECT – Application January 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*BFX Studio*). C6-2A/R8B zoning district.

PREMISES AFFECTED – 555 6th Avenue, Westerly side of 6th Avenue between West 15th Street and West 16th Street, Block 79, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated December 27, 2013, acting on DOB Application No. 120635465, reads, in pertinent part:

Proposed changes of use at cellar and first floor to physical culture establishment is contrary to ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-2A zoning district, partially within an R8B zoning district, and partially within an R8A zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a six-story mixed residential and commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on May 20, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of the application; and

WHEREAS, the subject site spans the west side of Sixth Avenue between West 15th Street and West 16th Street, partially within a C6-2A zoning district, partially within an R8B zoning district, and partially within an R8A zoning district; and

WHEREAS, the site has 150 feet of frontage along West 15th Street, 206.5 feet of frontage along Sixth Avenue, 150 feet of frontage along West 16th Street, and 30,975 sq. ft. of lot area; and

WHEREAS, the site is occupied by a six-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 9,492 sq. ft. of floor space – 4,012 sq. ft. of floor area on the first story and 5,480 sq. ft. of floor space in the cellar; and

WHEREAS, the applicant states that no portion of the PCE will operate within the R8A portion of the site; and

WHEREAS, the PCE will be operated as BFX Studio; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:00 a.m. to 11:00 p.m. and Saturday and Sunday, from 6:00 a.m. to 11:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to submit amended plans noting the proposed sound attenuation measures and signage analysis; and

WHEREAS, in response, the applicant submitted amended plans, as directed; the applicant also provided a letter from the acoustical consultant, which detailed the sound attenuation measures to be provided; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA095M dated January 3, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure;

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Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially within a C6-2A zoning district, partially within an R8B zoning district, and partially within an R8A zoning district, the operation of a PCE in portions of the cellar and first story of a six-story mixed residential and commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 8, 2014” – Fifteen (15) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on May 20, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT the hours of operation for the PCE will be limited to Monday through Friday, from 5:00 a.m. to 11:00 p.m. and Saturday and Sunday, from 6:00 a.m. to 11:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 20, 2014.

4-14-BZ

CEQR #14-BSA-097M

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TrizecHahn, 1065 Ave. of the Americas LLC, owner; Blink 1065 6th Ave., Ink., lessee.

SUBJECT – Application January 9, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within portions of an existing commercial building, C5-3(mid)(T) zoning district.

PREMISES AFFECTED – 1065 Avenue of The Americas, aka 111 West 40th Street, 112 West 41st Street. NWC of Avenue of the Americas and West 40th Street. Block 993, Lot 29. Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

WHEREAS, the decision of the Executive Director of the NYC Development HUB of the Department of Buildings (“DOB”), dated January 2, 2014, acting on DOB Application No. 121184164, reads, in pertinent part:

ZR 32-30 – Proposed physical culture establishment is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, within the Special Midtown District, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a 35-story commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on May 20, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is an L-shaped lot located on the west side of Sixth Avenue between West 40th Street and West 41st Street, within a C5-3 zoning district, within the Special Midtown District; and

WHEREAS, the site has 200 feet of frontage along West 40th Street, 98.75 feet of frontage along Sixth Avenue, 75 feet of frontage along West 41st Street, and 27,152.5 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 35-story commercial building; and

WHEREAS, the proposed PCE will occupy 19,633 sq. ft. of floor space – 765 sq. ft. of floor area on the first story and 18,868 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as Blink Fitness; and

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WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Thursday, from 5:00 a.m. to 11:00 p.m., Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA097M dated January 5, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of

the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C5-3 zoning district, within the Special Midtown District, the operation of a physical culture establishment (PCE) in portions of the cellar and first story of a 35-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 11, 2014" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on May 20, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 20, 2014.

78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for adjourned hearing.

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54-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

263-12-BZ & 264-12-A

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00).

Variance (Appendix G, Section BC G107, NYC Administrative Code) to permit construction in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street

and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision hearing closed.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision hearing closed.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for adjourned hearing.

213-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten

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Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17,
2014, at 10 A.M., for decision hearing closed.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for
515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance
(\$72-21) to legalize the enlargement of a now six story
family dwelling contrary to §23-145 (maximum floor area).
R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of
East 5th Street between Avenue A and B, Block 401, Lot
56, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 15,
2014, at 10 A.M., for continued hearing.

289-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for
New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-
21) to allow the development of a new, 304,000 s.f.
ambulatory care facility on the campus of New York
Methodist Hospital, contrary to floor area (§§24-11, 24-17
and 77-02), lot coverage (§24-11), rear yard (§24-382),
height and setback (§24-522), rear yard setback (§24-552),
and sign (§22-321) regulations. R6, C1-3/R6, and R6B
zoning district.

PREMISES AFFECTED – 473-541 6th Street aka 502-522
8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th A
venue, Block bounded by 7th Avenue, 6th Street, 8th Avenue
and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48,
Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 17,
2014, at 10 A.M., for deferred decision.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub,
LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance
(\$72-21) to allow a UG3 college (*Metropolitan College of
New York*) within a proposed mixed use building, contrary
to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest
corner of Brook Avenue and East 149th Street, Block 2294,
Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to June 10,
2014, at 10 A.M., for continued hearing.

319-13-BZ

APPLICANT – Herrick, Feinstein LLP, for Harlem Park
Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance
(\$72-21) to waive the minimum parking requirements (§25-
23) to permit the construction of a new, 682 unit, 32-story
mixed used building. 123 parking spaces are proposed. C4-7
zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park
Avenue, East 124th street, East 125 Street, Block 1749, Lot
33 (air rights 24), Borough of Manhattan.

COMMUNITY BOARD #11M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 10,
2014, at 10 A.M., for decision hearing closed.

325-13-BZ

APPLICANT – Eric Palatnik, P.C., for 3170 Webster
Avenue LLC, owner; CT Norwood LLC, lessee.

SUBJECT – Application December 23, 2013 – Special
Permit (§73-36) to permit the operation of Physical Cultural
Establishment (*Crunch Fitness*) within a portions of a
commercial building. C2-4/R7D zoning district.

PREMISES AFFECTED – 3170 Webster Avenue, East side
of Webster Avenue at intersection with East 205th Street.
Block 3357, Lot 37, Borough of Bronx.

COMMUNITY BOARD #7BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 24,
2014, at 10 A.M., for decision hearing closed.

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326-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 5225, LLC, owner.

SUBJECT – Application December 23, 2013 – Special Permit (§73-44) to reduce required off-street parking accessory to office building (UG 6) B-1 parking category. M1-1 (CP) zoning district.

PREMISES AFFECTED – 16-16 Whitestone Expressway, West Side of Whitestone Expressway (service road), 920.47 ft. north of 20th Avenue. Block 4148, Lot 50, 65. Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 17, 2014, at 10 A.M., for decision hearing closed.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2013 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot 28, 30, 34, 40, 41, 42, 43. Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for postponed hearing.

9-14-BZ

APPLICANT – Warsaw Burstein, LLP, for 177th Upper Broadway Holdings LLC, owner; 4168 Broadway Fitness Group LLC, lessee.

SUBJECT – Application January 17, 2014 – Special Permit (§73-36) & (§73-52) to allow the operation of a physical culture establishment fitness center (*Planet Fitness*) within the existing building and to permit the fitness center use to extend 25 feet into the R7-2 zoning district, contrary to §§32-10 & 22-10. C8-3 and R7-2 zoning district.

PREMISES AFFECTED – 4168 Broadway, southeast corner of the intersection formed by West 177th Street and Broadway, Block 2145, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #12M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision hearing closed.

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) proposed to add a third and fourth floor to an existing school building, contrary to §24-11 floor area and lot coverage, §24-521 maximum wall height, §24-35 side yard, §24-34 requires a 10' front yard and §24-361 rear yard of the zoning resolution. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for postponed hearing.

18-14-BZ

APPLICANT – Warsaw Burstein, LLP, for Infinity Fulton Street, LLC, owner; 1245 Fulton Fitness Group, LLC, lessee.

SUBJECT – Application January 29, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building. C4-5 zoning district.

PREMISES AFFECTED – 1245 Fulton Street, north side of Fulton Street between Bedford Avenue and Arlington Place, Block 1842, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

Absent: Commissioner Montanez1

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision hearing closed.

Jeff Mulligan, Executive Director

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*CORRECTION

This resolution adopted on February 25, 2014, under Calendar No. 238-07-BZ and printed in Volume 99, Bulletin Nos. 8-9, is hereby corrected to read as follows:

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III, owners.

SUBJECT – Application October 28, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a 12-story mixed-use building and a 6-story community facility dormitory and faculty housing building (*CUNY Graduate Center*), contrary to use and bulk regulations. The amendment seeks the elimination of the cellar and other design changes to the Dormitory Building, M1-4/R6A (LIC) zoning district.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east, Block 28, Lot 12, 15, 17, 18, 21, 121, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a site partially in an M1-4 zoning district and partially in an M1-4/R6A district within the Special Long Island City Mixed-Use District, the construction of a 12-story mixed residential and commercial building (the “Mixed-Use Building”) and a six-story student dormitory building (the “Dormitory Building”) for the City University of New York (“CUNY”) Graduate Center, contrary to use and bulk regulations; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, and then to decision on February 25, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is bounded by Fifth Street to the west, 46th Road to the north, and 47th Avenue to the south, with a total lot area of 66,838 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since September 23, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of a 12-story mixed residential and commercial building and a six-story student

dormitory building and faculty housing building connected by a cellar-level accessory parking garage, contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, and 23-711; and

WHEREAS, the Board issued a letter of substantial compliance on June 10, 2009, to permit certain modifications to the approved plans, and to acknowledge that although the project was originally filed at the Department of Buildings (“DOB”) under a single permit application (NB # 402661945), the project was subsequently filed as two separate projects, with the Mixed-Use Building retaining the original application number, and the Dormitory Building filed under new NB # 420006111; and

WHEREAS, the Board issued a second letter of substantial compliance on December 8, 2009, stating that the Board has no objection to the issuance of a temporary and permanent certificate of occupancy for the Mixed-Use Building prior to the construction of the Dormitory Building and the connection between the buildings; and

WHEREAS, the applicant states that the issuance of the December 8, 2009 letter was based on the anticipated occupancy of the Dormitory Building by the CUNY Graduate Center; however, subsequent to the issuance of the letter, the CUNY Graduate Center withdrew from the project; and

WHEREAS, on February 15, 2011, the Board approved an amendment to clarify that either the Mixed-Use Building or the Dormitory Building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; and

WHEREAS, the applicant notes that the February 15, 2011 amendment allows each building to proceed independently and provides flexibility for the commencement of construction at the earliest possible time; and

WHEREAS, the applicant also notes that CUNY has resumed participation in the project; and

WHEREAS, substantial construction was to be completed by September 23, 2012, in accordance with ZR § 72-23; however, by that date, construction had not been completed due to budgetary constraints; accordingly, on July 24, 2012, the Board granted an extension of time to complete construction, to expire on September 23, 2016; and

WHEREAS, the applicant now seeks an amendment to permit the following: (1) the elimination of the cellar level of the Dormitory Building, which includes accessory parking for 91 automobiles and approximately 6,600 sq. ft. of amenity and storage space; (2) a reduction in floor area for the Dormitory Building from 183,472 sq. ft. to 177,693 sq. ft.; (3) the elimination of the seventh floor; (4) reduction in size of the stair, elevator, and mechanical bulkheads, and reduction in building height; (5) addition of balconies on the fifth and sixth floors; and (6) minor modifications to interior layouts and roof; and

WHEREAS, specifically, the applicant states that the site is, in the wake of Superstorm Sandy, now within ZONE AE on the Federal Emergency Management Agency’s Flood Insurance Rate Map, which means the site is now considered to be within a high-risk, high-vulnerability zone, making a

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cellar more expensive to insure; and

WHEREAS, in addition, the applicant states that CUNY has reassessed its needs and determined that parking on the originally-proposed scale is neither necessary, nor desirable; and

WHEREAS, the applicant also notes that the zoning district does not require any parking, and that the area is well-served by mass transit; as such, a significant demand for parking onsite is not anticipated; likewise, what little demand exists can be accommodated by nearby facilities; and

WHEREAS, in support of this statement, the applicant provided a parking study, which reflects that the site will have sufficient parking without the cellar parking garage, due in part to the recent construction of new major parking facilities in the vicinity; and

WHEREAS, as for the other proposed modifications to the plans, the applicant states that they are minor in nature and are consistent with the programmatic needs articulated by the applicant and recognized by the Board in its original grant; and

WHEREAS, accordingly, the applicant states that the proposed amendment will have no negative impacts on the surrounding area; and

WHEREAS, at hearing, the Board requested clarification regarding whether excavation had been performed at the site; and

WHEREAS, in response, the applicant stated that excavation has proceeded and is required under the New York State Department of Environmental Conservation-mandated site-management plan; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 2008, to include the above-noted modifications; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received February 10, 2014”- (20) sheets; and *on further condition*;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 402661945)

Adopted by the Board of Standards and Appeals, February 25, 2014.

sheets, now reads: “Received February 10, 2014”- (20) sheets. Corrected in Bulletin No. 21, Vol. 99, dated May 28, 2014.

***The resolution has been revised to correct the Plans Dates which read: “Received February 10, 2014”- (18)**

BULLETIN

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June 19, 2014

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DOCKETS

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105-14-BZ

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106-14-A

84 William Street, situated at the northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot(s) 16, Borough of **Manhattan, Community Board: 10**. Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30 for the construction of a residential apartments to an existing building . C5-5 (LM) zoning district C5-5 district.

107-14-A

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108-14-BZ

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109-14-A

44 Marjorie Street, Marjorie Street, south of Sharrotts Road and East of Arthur Kill Road, Block 7328, Lot(s) 645, Borough of **Queens, Community Board: 3**. Appeal to permit the construction of a proposed two story commercial building which does not front on a legally ,mapped street contrary to GCL Section 36 .M1-1 SRD Zoning District . M1-1 district.

110-14-A

115 Roswell Avenue, North side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2642, Lot(s) 88, Borough of **Staten Island, Community Board: 2**. Proposed construction of a buildings that does not front a legally mapped street, pursuant the Article 3, Section 36 of the General City Law.R3A R32 district.

111-14-A

109 Roswell Avenue, North side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2641, Lot(s) 91, Borough of **Staten Island, Community Board: 2**. Proposed construction of a building that do not front on a legally mapped street pursuant Article 3 Section 36 of the General City Law.R3A R32 district.

112-14-A

105 Roswell Avenue, North side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2642, Lot(s) 92, Borough of **Staten Island, Community Board: 2**. Proposed construction of a building that front an a legally mapped street, pursuant to Article 3 of the General City Law. R3A R38 district.

113-14-A

86 Bedford Street, Northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot(s) 3, Borough of **Manhattan, Community Board: 10**. Appeal seeking revocation of a permit issued that allows a non conforming use eat/drink establishment to resume after being discontinued for several years . Ance of a permit ranting a Type 1 Alteration permit no. 120174658-01-AL to 86 Bedford Street, M R6 district.

114-14-BZ

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115-14-BZ

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DOCKETS

116-14-BZ

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117-14-BZ

101 W 91st Street, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17,29,40,90,29, Borough of **Manhattan, Community Board: 7**. Variance (§72-21) to permit the enlargement of a school (Trinity School) including construction of a 2-story building addition containing classrooms and other facilities. Located within a R7-2 zoning district. R7-2,C1-9 district.

118-14-BZ

1891 Richmond Road, NW side of Richmond 2667.09' southwest of the corner of Four Corners road and Richmond Road, Block 895, Lot(s) 61,63.65.67(61 tent), Borough of **Staten Island, Community Board: 2**. Variance (§72-21) proposed to construct a three story sixteen Dwelling Unit Condominium with accessory parking for thirty six cars. Located within R1-2 zoning district. R1-2,R3X NA1 district.

119-14-BZ

1151 3rd Avenue, North East corner of 3rd Avenue and East 67th Street, Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow the operation of a physical culture establishment of the second and third floor of the existing building. Located within a C1-9 zoning district. C1-9 district.

120-14-BZ

1151 3rd Avenue, North East corner of 3rd Avenue and East 67th Street, Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow the operation of a physical culture establishment on the fifth floor of the existing building located within a C1-9 zoning district. C1-9 district.

121-14-BZ

1151 Third Avenue LLC, North East corner of 3rd Avenue and East 67th Street, Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow for the operation of a physical culture establishment on the 4th floor of the existing building, located within an C1-9 zoning district. C1-9 district.

122-14-BZ

1318 East 28th Street, West side of 28th Street 140 feet of Avenue M, Block 7663, Lot(s) 56, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a two- story single family residence located within a R2 zoning district . R2 district.

123-14-BZ

855 Avenue of the Americas,, Avenue of the Americas between 30th Street and 31st Street., Block 806, Lot(s) 34, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of physical culture establishment in portion of the cellar and first floor of the existing building located within a C6-4X and M1-6 zoning district. C6-4X, M1-6 district.

124-14-BZ

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125-14-BZ

11 Avenue C, Between East 2nd Street & East Houston Street, Block 384, Lot(s) 33, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to facilitate the construction of a ten-story mixed-use forty -six (46) residential dwelling units and retail on the ground floor and cellar, located within an R8a zoning district. R8A district.

126-14-A

3153 Richmond Terrace, North side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot(s) 15, Borough of **Staten Island, Community Board: 1**. GCL 35: proposed construction of a warehouse building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law. M3-1 district.

127-14-BZ

32-41 101st Street, east side of 101st, 180 feet north of intersection with Northern Boulevard, Block 1696, Lot(s) 48, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit construction of a cellar and two-story, two-family dwelling on a vacant lot that does not provide two required side yards, and does not provide two off street parking spaces, located within an R4 zoning district.. R4 district.

DOCKETS

128-14-A

47 East 3rd Street, East 3rd Street between First and Second Avenues, Block 445, Lot(s) 62, Borough of **Manhattan, Community Board: 10**. Final Determination to allow an off-street loading berth as accessory to a medical office for want of evidence that the loading berth is clearly incidental to and customarily found in connection with a medical office. C2-5, R7A/R8B district.

129-14-BZ

2137 East 12th Street, Located on the east side of East 12th Street between Avenue U and Avenue V, Block 7344, Lot(s) 62, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of a single-family detached residence located within an R5 zoning district. R5 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JUNE 24, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 24, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

391-80-BZ

APPLICANT – Sheldon Lobel, P.C., for The NY Community Hospital of Brooklyn, INK., owner.
SUBJECT – Application April 16, 2014 – Amendment of a previously approved Variance (§72-21) to permit an enlargement and enclosure of a ramp for a hospital. R7A zoning district.
PREMISES AFFECTED – 2525 Kings Highway, south side of Avenue O approximately 175 feet northeast of the intersection formed by Bedford Avenue and Kings Highway, Block 6772, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #14BK

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross & Ross, owner; Bally Total Fitness of Greater NY., lessee.
SUBJECT – Application April 28, 2004 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the operation of a Physical Culture Establishment (*Bally's Total Fitness*) which expired on May 10, 2014.
C1-5(R8A) & R7A zoning district.
PREMISES AFFECTED – 1915 Third Avenue, southeast corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #11M

ZONING CALENDAR

28-12-BZ

APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.
SUBJECT – Application February 6, 2012 – Special Permit (§73-49) to legalize the required accessory off street rooftop parking on the roof of an existing two-story office building contrary to §44-11. M1-1 zoning district.
PREMISES AFFECTED – 13-15 37th Avenue, 13th Street and 14th Street, bound by 37th Avenue to the southwest, Block 350, Lot 36, Borough of Queens.
COMMUNITY BOARD #1Q

243-12-BZ

APPLICANT – EPDSO, Inc., for Best Equities LLC, owner; Page Fit Inc. d/b/a Intoxx Fitness, lessee.
SUBJECT – Application August 7, 2012 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Intoxx Fitness*). M3-1 zoning district.
PREMISES AFFECTED – 236 Richmond Valley Road, southern side of Richmond Valley Road between Page Avenue and Arthur Kill Road, Block 7971, Lot 200, Borough of Staten Island.
COMMUNITY BOARD #3SI

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.
SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility contrary to §22-14. Proposed construction for a three-story building not fronting on legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.
COMMUNITY BOARD #2SI

265-13-BZ

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.
SUBJECT – Application September 6, 2013 – Variance (72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*) contrary to zoning bulk regulations. R3A zoning district.
PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.
COMMUNITY BOARD #12Q

311-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Midyan Gate Realty No 3 LLC, owner; for Global Health Clubs, LLC, lessee.
SUBJECT – Application November 25, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Retro Fitness*). M1-1 zoning district.
PREMISES AFFECTED – 325 Avenue Y, northeast corner of Shell Road and Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.
COMMUNITY BOARD #15BK

CALENDAR

317-13-BZ

APPLICANT – Law office of Lyra J. Altman, for Michelle Schonfeld & Abraham Schonfeld, owners.

SUBJECT – Application December 10, 2013 – Special Permit (§73-622) the enlargement of an existing two family home, to be converted to a single family home, contrary to floor area and open space (23-141); side yards (23-461) and less than the required rear yard (23-47). R2 zoning district.

PREMISES AFFECTED – 1146 East 27th Street, west side of 27th Street between Avenue K and Avenue L, Block 7626, Lot 63, Borough of Brooklyn.

COMMUNITY BOARD #14BK

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) proposed to add a third and fourth floor to an existing school building, contrary to §24-11 floor area and lot coverage, §24-521 maximum wall height, §24-35 side yard, §24-34 requires a 10' front yard and §24-361 rear yard of the zoning resolution. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 10, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

457-56-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for
Medow-"The Shop" 148-152L.P., owner.

SUBJECT – Application November 19, 2013 – Extension of
Term of variance permitting accessory parking of motor
vehicles, customer parking, and loading and unloading in
conjunction with adjacent factory building. R6B zoning
district.

PREMISES AFFECTED – 152-154 India Street, Southern
side of India Street, 150 ft. east of intersection of India
Street and Manhattan Avenue. Block 2541, Lot 12, Borough
of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and
an extension of term for a variance permitting a commercial
parking lot within a residence district, which expired on
February 13, 2014; and

WHEREAS, a public hearing was held on this
application on April 8, 2014, after due notice by publication in
The City Record, with a continued hearing on May 13, 2014,
and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Commissioner Hinkson,
Commissioner Montanez, and Commissioner Ottley-Brown;
and

WHEREAS, the subject site is located on the south side
of India Street, between Manhattan Avenue and McGuinness
Boulevard, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the subject premises since December 4, 1956, when it granted
an application under the subject calendar number to permit
accessory and consumer parking, loading and unloading in
connection with a factory building located on an adjoining lot;
and

WHEREAS, the grant has been extended and amended
over the years, most recently on January 11, 2005, when,
under the subject calendar number, the Board granted an

extension of term for ten years, to expire on February 13,
2014; and

WHEREAS, the applicant now seeks an additional
extension of term; and

WHEREAS, at hearing, the Board directed the applicant
to: (1) remove the barbed wire along the fence on the India
Street frontage; and (2) submit proof that the subject parking
lot and adjacent warehouse building are in common
ownership; and

WHEREAS, in response, the applicant submitted: (1)
photos depicting the removal of the barbed wire; and (2) the
deed for each lot, which reflects that the lots are in common
ownership; and

WHEREAS, pursuant to ZR § 11-411, the Board may,
in appropriate cases, allow an extension of the term of a pre-
1961 variance; and

WHEREAS, the Board has determined that the evidence
in the record supports the finding required to be made under
Z.R. § 11-411.

Therefore it is Resolved, that the Board of Standards and
Appeals *reopens* and *amends* the resolution, dated December
4, 1956, so that as amended the resolution reads: “to permit
the extension of the term of the variance for an additional ten
(10) years from February 13, 2014 expiring on February 13,
2024; *on condition* that all work shall substantially conform to
drawings as they apply to the objections above noted, filed
with this application marked “Received November 19, 2013” -
(1) sheet; and *on further condition*;

THAT the term of the variance will expire on February
13, 2024;

THAT barbed wire will not be installed atop the fence
on the India Street frontage;

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 a 100-percent opaque fence with a height of eight
feet will be installed and maintained along the easterly lot line;

THAT the above conditions will appear on the
certificate of occupancy;

THAT all conditions from prior resolutions not
specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by
the Board in response to specifically cited and filed
DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other
applicable provisions of the Zoning Resolution, the
Administrative Code and any other relevant laws under its
jurisdiction irrespective of plan(s) and/or configuration(s) not
related to the relief granted.”

(DOB Application #301801904)

Adopted by the Board of Standards and Appeals, June
10, 2014.

MINUTES

192-96-BZ

APPLICANT – Sheldon Lobel, PC, for 1832 Realty LLC, owner.

SUBJECT – Application January 7, 2014 – Amendment of a previously approved variance (§72-21) which permitted a large retail store (UG 10) contrary to use regulations. The application seeks to eliminate the term, which expires on September 23, 2022. C1-2/R5 zoning district.

PREMISES AFFECTED – 1832 86th Street, aka 1854 86th Street; 1-29 Bay Street, 2-6 Bay 20th Street, located on the southwest side of 86th Street spanning the entire block frontage between Bay 19th St and Bay 20th Street. Block 6370, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a use variance to eliminate the term; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in The City Record, with a continued hearing on May 6, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of 86th Street and Bay 19th Street, partially within an R5 zoning district and partially within an C1-2 (R5) zoning district; and

WHEREAS, the site has approximately 193 feet of frontage along 86th Street, approximately 254 feet of frontage along Bay 19th Street, approximately 100 feet of frontage along Bay 20th Street, and 34,269 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with 33,875 sq. ft. of floor area (0.99 FAR); it is operated as a Marshall’s retail store; and

WHEREAS, on September 23, 1997, under the subject calendar number, the Board granted a variance to permit the renovation of the existing building, from a non-conforming movie theater (Use Group 8) and retail stores (Use Group 6) to a retail store exceeding 10,000 sq. ft. (Use Group 10), contrary to ZR § 32-15, for a term of 25 years, to expire on September 23, 2022; and

WHEREAS, the applicant now seeks to amend the grant to eliminate the 25-year term; and

WHEREAS, the applicant represents that the term has hindered the owner’s ability to refinance the property and secure a tenant for a stable lease term; the applicant states that

the lease term does not coincide directly with the variance term, which makes for uncertainty and difficulty in securing a long-term commercial lease, which typically runs at least 20 years; and

WHEREAS, the applicant contends that commercial use of the site without a term is appropriate and will have no negative impacts on the surrounding neighborhood; and

WHEREAS, the applicant notes that the majority of the site is within an C1-2 (R5) district, where commercial uses are permitted as-of-right; as for the mid-block R5 portion of the site, the applicant notes that the subject building was constructed in the 1920s and occupied as a theater for decades; as such, commercial use is well-established in the R5 portion of the site; and

WHEREAS, the applicant states that nearly all nearby sites along 86th Street—a major commercial thoroughfare—are used for commercial purposes; and

WHEREAS, the applicant also notes that the current tenant is popular in the community and provides jobs for community residents; and

WHEREAS, at hearing, the Board directed the applicant: (1) provide proof that all property owners within 400 feet of the site were notified of the proposal; and (2) remove the barbed wire atop the fence that encloses the building’s parking lot; and

WHEREAS, in response, the applicant submitted: (1) proof of the required notifications; and (2) photographs showing the removal of the barbed wire; and

WHEREAS, based upon its review of the record, the Board finds that the proposed elimination of term is appropriate, with certain conditions, as noted below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 1997, to permit the elimination of the 25-year term of the variance, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘January 7, 2014’-(7) sheets; and *on further condition*:

THAT barbed wire will not be installed at the site;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT DOB must 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.”

(DOB Application No. 300554905)

Adopted by the Board of Standards and Appeals, June 10, 2014.

MINUTES

178-99-BZ

APPLICANT – Eric Palatnik, P.C., for Saltru Associates Joint Venture, owner.

SUBJECT – Application November 30, 2012 – Amendment (§§72-01 & 72-22) of a previously granted variance (§72-21) which permitted an enlargement of an existing non-conforming department store (UG 10A). The amendment seeks to replace an existing 7,502 sq. ft. building on the zoning lot with a new 34,626 sq. ft. building to be occupied by a department store (UG 10A) contrary to §42-12. M3-1 zoning district.

PREMISES AFFECTED – 8973/95 Bay Parkway, 1684 Shore Parkway, south side of Shore Parkway, 47/22' west of Bay Parkway, Block 6491, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a variance to permit a minor enlargement; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in The City Record, with continued hearings on March 25, 2014 and April 29, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Bay Parkway and Shore Parkway, within an M3-1 zoning district; and

WHEREAS, the site fronts on Bay Parkway, Shore Parkway, and Gravesend Bay, and it has 692,110 sq. ft. of upland lot area and 136,982 sq. ft. of seaward lot area, for a total lot area of 829,110 sq. ft.; and

WHEREAS, the site is occupied by six commercial buildings (Buildings A, B, C, D, E, and F) with a total of 307,644 sq. ft. of floor area (0.44 FAR); large non-conforming retail stores (Use Groups 10 and 12) occupy 93 percent of the floor area (285,437 sq. ft.) three percent of the floor area (8,119 sq. ft.) is devoted to conforming uses, and four percent of the floor area (14,089 sq. ft.) is vacant; and

WHEREAS, the applicant represents that Building A is occupied by retail stores (Use Group 6), department stores (Use Group 10), and toy stores (Use Group 12), Building B is occupied by retail stores (Use Group 6), Building C is occupied as an automotive service establishment (Use Groups 16 and 17), Building D is occupied by retail stores (Use

Group 6), Building E is occupied by a bank (Use Group 6), and Building F is an accessory structure that contains a transformer; and

WHEREAS, the site has been under the Board's jurisdiction since February 8, 1977, when, under BSA Cal. No. 730-76-A, the Board granted the application of the Fire Commissioner to modify Certificate of Occupancy No. 197540 to require an automatic wet sprinkler system within Building A at the site; and

WHEREAS, subsequently, on June 7, 1983, under BSA Cal. No. 235-83-BZ, the Board granted a special permit for the operation of an amusement arcade Use Group 15A for a term of one year; on August 7, 1984, the Board extended the term of the grant; however, on April 8, 1986, the Board denied a request for an additional extension of term; the applicant states that the arcade no longer occupies any space at the site; and

WHEREAS, most recently, on June 27, 2000, under the subject calendar number, the Board granted a variance to permit the legalization of an enlargement of a non-conforming department store (Use Group 10) at Building A, contrary to ZR §§ 52-22 and 52-41; and

WHEREAS, the applicant now seeks to amend the grant to permit the demolition of Building C, which has 7,502 sq. ft. of floor area occupied as an automotive service establishment (Use Groups 16 and 17), and construction of a new two-story building with 34,626 sq. ft. of floor area to be occupied as a department store (Use Group 10A); and

WHEREAS, the applicant states that the proposal will result in a net increase in floor area from 307,644 sq. ft. (0.44 FAR) to 334,768 sq. ft. (0.47 FAR); the applicant notes that site is significantly underdeveloped (the maximum FAR is 2.0) and that even with the proposed increase in floor area of 0.03 FAR, the site is developed to less than 25 percent of its maximum floor area; and

WHEREAS, the applicant asserts that the unique physical conditions cited by the Board in its prior grant, including the topographic abnormalities and history of development of the site, remain and that the proposed enlargement is necessary for the owner to achieve a reasonable return; and

WHEREAS, in support of this assertion, the applicant submitted a financial analysis, which concluded that Building C could not be profitably used for conforming uses such as small, Use Group 6 retail stores, and that only another Use Group 10 retailer would be appropriate for the site given the site's M3-1 designation, its isolation from pedestrian traffic, and the predominant existing Use Group 10 and 12 retail use on the site; and

WHEREAS, turning to neighborhood impacts, the applicant asserts and the Board agrees that the construction of an additional Use Group 10 retailer at this site will have no negative impacts on the surrounding neighborhood; and

WHEREAS, at hearing, the Board directed the applicant to: (1) verify that the proposal complies with the applicable parking and loading requirements; and (2) examine, in consultation with the Department of Transportation ("DOT"),

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the potential traffic effects of the proposal upon the surrounding neighborhood; and

WHEREAS, in response, the applicant stated that the proposal complies in all respects with the applicable bulk regulations; and

WHEREAS, at to traffic, the applicant submitted a memorandum from DOT, which states that signal timing adjustments may be necessary to manage traffic surrounding site the during weekday evening and Saturday midday hours; and

WHEREAS, based upon its review of the record, the Board finds that the proposed elimination of term is appropriate, with certain conditions, as noted below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 27, 2000, to permit the noted modifications, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received November 25, 2013'-(6) sheets and 'April 11, 2014'-(1) sheet; and *on further condition*:

THAT the bulk parameters of the new Building C will be two stories and 34,626 sq. ft. of floor area;

THAT the floor area of the zoning lot will not exceed 334,768 sq. ft. (0.47 FAR);

THAT parking and loading will be as reviewed and approved by DOB;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT DOB must 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."

Adopted by the Board of Standards and Appeals, June 10, 2014.

322-05-BZ

APPLICANT – Eric Palatnik P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application March 7, 2014 – Extension of Time to Complete Construction for a previously granted variance (§72-21) for an enlargement of an existing two story home and the change in use to a community use facility (*Queens Jewish Community Council*), which expired on March 7, 2014. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of an enlargement of an existing single-family home and its change in use from residential to community facility use, which expired on March 7, 2014; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in *The City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Main Street and 70th Avenue, within an R4B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 2006 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing two-story plus cellar single-family home and the change in use from residential to community facility; and

WHEREAS, substantial construction was to be completed by March 7, 2010, in accordance with ZR § 72-23; however, it was anticipated that substantial construction would not be completed by that date and the applicant sought and obtained on July 28, 2009 an extension of time to complete construction until March 7, 2014; and

WHEREAS, the applicant represents that, subsequent to the 2009 extension of time to complete construction, it encountered delays in obtaining permits from the Department of Buildings; among the delays was an audit of the application in which several objections were raised; and

WHEREAS, therefore, the applicant requests an extension of time to complete construction; and

WHEREAS, the applicant represents that it has resolved all outstanding audit objections and is prepared to obtain permits and commence construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 7, 2006, so that as amended the resolution reads: "to grant an extension of the time to complete construction for a term of three years from the expiration of the previous grant, to expire on March 7, 2017; *on condition*:

THAT substantial construction will be completed by March 7, 2017;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

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(DOB Application No. 402213993)

Adopted by the Board of Standards and Appeals, June 10, 2014.

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of an approved Special Permit (§73-211) which permitted the reconstruction of an existing auto service station (UG 16B), which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete renovation of an existing automotive service station, and an amendment to permit certain modifications to the convenience store accessory to the station; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in *The City Record*, with a continued hearing on May 6, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Coney Island Avenue and Avenue P, within an R7A (C2-3) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 26, 1919, when, under BSA Cal. No. 368-19-BZ, it approved a variance for the construction of a one-story parking garage in what was then a residential zoning district; and

WHEREAS, subsequently, on September 14, 1982, under BSA Cal. No. 215-82-A, the Board granted an appeal to permit self-service gasoline pumps at the site; and

WHEREAS, most recently, on June 17, 2008, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-211 to permit site modifications to an existing automotive service station, including a new metal canopy and new fuel dispensing pumps, contrary to ZR §§ 52-

22 and 52-41, for a term of ten years, to expire on June 17, 2018; and

WHEREAS, under the 2008 grant, substantial construction was to be completed by June 17, 2012, in accordance with ZR § 73-30; however, work was not even commenced by that date and the site has since been acquired by a new owner; and

WHEREAS, accordingly, the applicant seeks an extension of time to complete construction; and

WHEREAS, in addition, the applicant seeks an amendment to permit certain modifications to the accessory convenience store on the site; the applicant notes that although the proposal will result in a minor increase the size of the accessory convenience store, the store remains in compliance with Department of Buildings Technical Policy and Procedure Notice No. 10/1999; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the hours of garbage collection; (2) the illumination of the site and its effects on adjacent residential sites; (3) the location of the bus stop along Coney Island Avenue; and (4) a non-permitted advertising sign at the site; and

WHEREAS, as to the hours of garbage collection, the applicant represents that garbage collection will be limited to three times per week and between the hours of 7:30 a.m. and 7:30 p.m.; and

WHEREAS, as to the illumination of the site, the applicant reduced the number of lighting fixtures on the canopy from 18 to 12, which will minimize the light spillage into the adjacent residential sites; and

WHEREAS, as to the location of the bus stop, the applicant states that the Metropolitan Transit Authority (“MTA”) has endorsed its proposed relocation of the bus stop, however, Department of Transportation (“DOT”) approval has not yet been secured; and

WHEREAS, finally, as to the advertising sign, the applicant submitted a photograph that demonstrates that the sign has been removed; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 17, 2008, so that as amended the resolution reads: “to permit the noted modifications and to grant an extension of the time to complete construction for a term of four years from the expiration of the previous grant, to expire on June 17, 2016; *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received May 20, 2014’ - (9) sheets; *on further condition*:

THAT DOT, MTA, and any other required approvals for the relocation of the bus stop along Coney Island Avenue will be obtained prior to the issuance of a DOB permit;

THAT lighting, signage, and site circulation will in accordance with the BSA-approved plans;

THAT garbage collection will be limited to three days

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per week between the hours of 7:30 a.m. and 7:30 p.m.;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed by June 17, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 10, 2014.

173-09-BZ

APPLICANT – Goldman Harris LLC, for 839-45 Realty LLC, owner; Ranco Capital LLC, lessee.

SUBJECT – Application March 25, 2014 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a four-story mixed use building, which expires on December 14, 2014. C8-2/M1-1 zoning district.

PREMISES AFFECTED – 839-845 Broadway aka 12-14 Park Street, southeast corner of Broadway and Park Street, Block 3134, Lots 5, 6, 10, 11, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction on a conversion of an existing three-story building to a four-story mixed residential and commercial building with 33 affordable housing units, which will expire on December 14, 2014; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in *The City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Park Street and Broadway, partially within a C8-2 zoning district and partially within an M1-1 zoning district; and; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 2010, when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing three-story building to a

four-story mixed residential and commercial building, contrary to ZR §§ 32-00 and 42-00; and

WHEREAS, pursuant to ZR § 72-23, substantial construction was to be completed by December 14, 2014; however, the applicant states that construction has yet commence due to difficulties obtaining financing and a change in control of the site; and

WHEREAS, therefore, the applicant requests an extension of time to complete construction; and

WHEREAS, at hearing, the Board inquired as to whether, consistent with the original grant, the development will include affordable housing units; and

WHEREAS, in response, the applicant confirmed that the development will include affordable housing units; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 10, 2010, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years from the expiration of the previous grant, to expire on December 10, 2018; *on condition*:

THAT substantial construction will be completed by December 10, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 320003474)

Adopted by the Board of Standards and Appeals, June 10, 2014.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq. of Kramer Levin Naftalis & Frankel LLP, for Central Synagogue, owner.

SUBJECT – Application February 26, 2014 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (*Central Synagogue*), which expires on February 23, 2014. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, North side of East 55th Street, between park and Lexington Avenue, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

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THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for the enlargement of an existing Use Group 4 community facility building, which does not comply with floor area and initial setback regulations, which expired on February 23, 2014; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject is located within a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District (MiD); and

WHEREAS, this application was brought on behalf of Congregation Ahawath Chesed Shaar Hashomayim, also known as Central Synagogue (the "Synagogue") a not for profit religious institution; and

WHEREAS, the Board has exercised jurisdiction over the site since February 23, 2010 when, under the subject calendar number, the Board granted a variance to permit the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; and

WHEREAS, substantial construction was to be completed by February 23, 2014, in accordance with ZR § 72-23; however, the applicant states that the Synagogue has been unable to raise sufficient funds to proceed with the proposal; and

WHEREAS, accordingly, the applicant now seeks additional time to obtain funding and complete construction; and

WHEREAS, the site occupied by the subject building (Tax Lot 10), the Synagogue's community house (the "Community House"), is part of a combined zoning lot that was created in 1981, pursuant to a Zoning Lot Declaration Agreement, and includes Tax Lots 9, 12, and 63; and

WHEREAS, Tax Lot 9 is immediately to the west of the Community House and is occupied by a townhouse (the "Townhouse"); Tax Lot 12 is immediately to the east of the Community House and is occupied by a Hotel; and Tax Lot 63 is located to the north of the Community House, with frontage on East 56th Street, and is occupied by a commercial tower (the "Commercial Tower"); and

WHEREAS, pursuant to the Board's Rules of Practice and Procedure § 1-09.4 (*Owner's Authorization*), every owner of record on a zoning lot which is the subject of an application must execute and submit the Board's Affidavit of Ownership and Authorization form; and

WHEREAS, accordingly, at the April 8, 2014 public hearing, the Board inquired whether the Synagogue had obtained Affidavits from all owners on the zoning lot; and

WHEREAS, in response, the applicant stated that it had obtained Affidavits from the Townhouse and Hotel and

anticipated one from the Commercial Tower; and

WHEREAS, the Board directed the applicant to submit all Affidavits by April 15, 2014 and to document the process of seeking the Affidavit from the Commercial Tower if it had not been obtained; and

WHEREAS, further, the Board noted that if the final Affidavit had not been received, the Board would re-open the hearing on April 29, 2014 to allow testimony from the Commercial Tower owner; and

WHEREAS, the applicant submitted executed Affidavits of Ownership and Authorization forms from the Synagogue, Townhouse, and Hotel; and

WHEREAS, by submission dated April 15, 2014, the applicant states that it did not obtain an executed form from the Commercial Tower and, thus, seeks a waiver of the Board's rule; and

WHEREAS, in support of its waiver request, the applicant submitted documents to establish its efforts to obtain the Commercial Tower's authorization; and

WHEREAS, specifically, those efforts include: (1) a letter dated February 21, 2014 to representatives of the Commercial Tower explaining the need for the subject application and requesting the execution and return of the Board's Affidavit of Ownership and Authorization form; (2) an April 7, 2014 email and phone call to the current representative of the Commercial Tower (who replaced the earlier representatives) indicating that a public hearing would be held on April 8, 2014 and stating that absent the receipt of the Affidavit of Ownership and Authorization, the Synagogue would request a waiver of the Board's rule; (3) an April 10, 2014 email to the Commercial Tower representative informing him that the Board sought the document by April 15, 2014 and the final hearing was set for April 29, 2014; and (4) April 14 and 15, 2014 follow up emails and letters to the Commercial Tower representative, notifying him of the opportunity to appear and provide testimony at the April 29, 2014 hearing; and

WHEREAS, the applicant notes that the Commercial Tower owner consented to the underlying variance application; and

WHEREAS, further, the applicant notes that only the Synagogue site is subject to the discretionary relief provided by the variance and no construction is proposed for any other tax lot; and

WHEREAS, the Board notes that the Commercial Tower's representative appeared at the April 29, 2014 public hearing and requested additional time to make a submission; and

WHEREAS, the Board granted the Commercial Tower's representative time to make a submission after the hearing and set a new decision date of June 10, 2014; and

WHEREAS, subsequently, the Commercial Tower's representative communicated to Board staff that he would not be making a submission; and

WHEREAS, the Board notes that the Townhouse and the Commercial Tower provided Affidavits of Ownership and Authorization in the context of the underlying variance, but

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the Hotel did not; and

WHEREAS, accordingly, the applicant sought and obtained a waiver of the Board's rule (formerly § 1-03(g)) for the underlying variance application, based on the evidence it provided and the Board's conclusion about the spirit of its rule being maintained; and

WHEREAS, the Board has determined that the spirit of the Rule, to provide notification to owners on the zoning lot and to require authorization from an owner whose site is the subject of discretionary relief, is maintained, even in the absence of the Commercial Tower's authorization, because (1) the applicant sought authorization from all of the owners, in good faith; (2) all owners were notified of the application and kept apprised of the hearing schedule; (3) only the Synagogue Site was the subject of the requested discretionary relief as no construction was proposed for any of the other tax lots; and (4) pursuant to its Rule § 1-14.2 (*Waiver of the Rules of Practice and Procedure*), the Board may waive its own rules in appropriate circumstances; and

WHEREAS, the Synagogue's proposal is limited to the enlargement of its Community House, which it owns and operates; and

WHEREAS, accordingly, the request for an extension of term focuses on the Community House Site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, dated February 23, 2010, so that as amended the resolution reads: "to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on June 10, 2018; *on condition*:

THAT substantial construction will be completed by June 10, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 120097849)

Adopted by the Board of Standards and Appeals, June 10, 2014.

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.
SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.

PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over July 29, 2014, at 10 A.M., for continued hearing.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184' east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

186-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (UG 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over July 15, 2014, at 10 A.M., for adjourned hearing.

47-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Flatlands 78, L.L.C., owner.

SUBJECT – Application December 13, 2013 – Amendment of a previously approved Variance (§72-21) which permitted construction of a one-story and cellar retail drug store and five smaller stores with accessory parking. The amendment is seeking to remove the twenty-year term restriction imposed by the Board. C2-3/R5D & R5B zoning district.
PREMISES AFFECTED – 7802 Flatlands Avenue, corner and through lot located on the east side of Flatlands Avenue

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between East 78th Street and East 79th Street, Block 8015, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over July 15, 2014, at 10 A.M., for continued hearing.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over July 15, 2014, at 10 A.M., for adjourned hearing.

280-01-BZ

APPLICANT – Akerman, LLP, for S&M Enterprises, owner.

SUBJECT – Application April 25, 2014 – Extension of Time to Complete Construction and obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for construction of a mixed use building, which expires on May 7, 2014. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2nd Avenue, west side of 2nd Avenue between East 36th and East 37th Streets, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

341-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owner.

SUBJECT – Application March 25, 2014 – Amendment of previously approved Variance (§72-21) which permitted retail stores (UG 6) on the first floor of an existing five story building. The amendment seeks to eliminate the term, which expires in April 8, 2023. R8B zoning district.

PREMISES AFFECTED – 231 East 58th Street, north side of East 58th Street between Second and Third Avenues, Block 1332, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

164-13-A

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse Department of Buildings’ determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated May 3, 2013, acting on Department of Buildings Application No. 320378088 reads, in pertinent part:

This Department regrets it cannot issue a Letter of No Objection for New Law Tenant Class A M.D. & Single Room Occupancy to [be] occupied or rented for less than 30 days as per Chapter 225 of the Laws of 2010, which clarified existing provisions related to occupancy of Class A Multiple Dwellings.

In order to allow such use, an Alteration Application must be filed with the Department to change use and Certificate of Occupancy obtained if permitted by zoning; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York State Assemblymember Linda

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B. Rosenthal and New York City Council Member Helen Rosenthal provided testimony in opposition to the appeal, citing concerns about illegal transient hotel use including occupancy periods of just days at a time, which are disruptive to the permanent tenants and the surrounding residential uses; and

WHEREAS, the Goddard Riverside SRO Law Project and the Hotel Trades Council provided testimony in opposition to the appeal, citing concerns about a history of harassment towards permanent tenants and otherwise protecting their rights; and

WHEREAS, certain community members and building residents provided testimony in opposition to the appeal, citing concerns about transient use in a residence zoning district and within a building occupied by permanent tenants required to share space with those renting on a short term; and

WHEREAS, certain community members spoke in support of the appeal, citing concerns that the building might otherwise be converted into a homeless shelter; and

WHEREAS, the site is located on the north side of West 79th Street between West End Avenue and Riverside Drive within an R10A zoning district and is occupied by a ten-story (with a partial 11th story) building (the “Building”); and

WHEREAS, this appeal seeks reversal of the Determination, thereby directing DOB to issue a Letter of No Objection stating that the use of the Building as Class A single room occupancy for periods of no less than one week is permitted by the existing certificate of occupancy No. 53010; and

Building History

WHEREAS, the Building was constructed in 1906 as the Lasanno Court, an approximately 40-unit apartment building; and

WHEREAS, during the Great Depression, in the 1930s, the Building was subdivided into single room occupancy (SRO) units; and

WHEREAS, in 1939, the New York State Legislature adopted MDL § 248, known as the Pack Bill, which provides regulations for SRO buildings; and

WHEREAS, in 1943, the Building was altered to comply with MDL § 248 and on March 25, 1943, DOB issued the Building’s first CO permitting 247 SRO units; the Building was renamed the Imperial Court Hotel; and

WHEREAS, DOB also issued COs in 1954 and September 1960; and

WHEREAS, on November 7, 1960, DOB issued the most recent CO permitting in the cellar, “one (1) superintendent’s apartment, boiler room, storage and tenants’ laundry”; on the first floor, “sixteen (16) rooms-single room occupancy, two (2) community kitchenettes, registration desk, manager’s office and lobby of building”; on the second through tenth floors, “twenty-three (23) rooms-single room occupancy and two (2) community kitchenettes”; and in the penthouse, “four (4) rooms – single room occupancy;” and

WHEREAS, the applicant states that in total, the CO permits 227 SRO Units and that currently and historically, 64 of the 227 SRO units have been regulated through rent control or stabilization (the “Statutory Units”); and

WHEREAS, the Appellant states that since 1979, all of the 64 Statutory Units and all of the 163 non-Statutory Units have been rented for periods of no less than seven days, in compliance with the CO and the MDL; the Appellant submitted occupancy logs for 2008, 2009, 2010, and 2011 in support of this claim; and

Procedural History

WHEREAS, on January 13, 2011, DOB issued Notices of Violation in connection with the seven-day rentals; and

WHEREAS, on January 19, 2011, the owner applied to DOB for a Certificate of No Harassment (CONH), pursuant to Administrative Code § 28-107.4 in connection with its application for a permit to build a second means of egress; and

WHEREAS, on September 13, 2011, the Department of Housing Preservation and Development (HPD) commenced a proceeding against the owner at the Office of Administrative Trials and Hearings (OATH) seeking a denial for the application for a CONH on the grounds that it had committed acts of harassment against some of the tenants; and

WHEREAS, on December 7, 2012, the OATH administrative law judge held that the owner had committed some acts of harassment against some of the tenants and recommended denial of the CONH; and

WHEREAS, in January 2013, the Environmental Control Board sustained the violations, finding that stays of less than 30 days were not permitted by the CO; and

WHEREAS, on February 11, 2013, the owner requested a Letter of No Objection (LNO) from DOB stating that the use of the Building as a Class A SRO for periods of no less than one week is permitted by the existing certificate of occupancy; DOB’s denial of that request forms the basis of the subject appeal; and

WHEREAS, the Building is the subject of an Article 78 proceeding in New York Supreme Court, (Index No. 103032-2012) appealing ECB’s decision to sustain the violations and is pending; and

WHEREAS, the Appellant states that since January 2011, it has attempted to rent the 163 non-statutory Units for periods of no less than 30 days, but the majority of the units have remained vacant, a condition which prompted the Appellant to seek the LNO to allow rental of the units for terms not less than one week; and

The Relevant Statutory Provisions

WHEREAS, relevant MDL provisions are provided below in pertinent part:

1939 Text

MDL § 248 (*Single Room Occupancy*)

(16) No room shall be rented in any such building for a period of less than a week.

1946 Text

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(Definitions)

MDL § 4

(16) “Single room occupancy” is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling.

MDL § 4

(8) A “class A” multiple dwelling is a multiple dwelling which is occupied, as a rule, for permanent residence purposes . . .

MDL § 4

(9) A “class B” multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals . . .

1960 Text

MDL § 248 (*Single Room Occupancy*)

(16) It shall be unlawful to rent any room in any such dwelling for a period of less than a week.

MDL § 4 (*Definitions*)

Class A Multiple Dwelling: a multiple dwelling which is occupied, as a rule, for residence purposes and not transiently.

Class B Multiple Dwelling: a multiple dwelling which is occupied, as a rule, transiently.

2011 MDL Amendment (Chapter 225 of 2010)

MDL § 4.8(a): A “class A” multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, “permanent residence purposes” shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit.

MDL § 248

(1). . . A dwelling occupied pursuant to this section shall be deemed a class A dwelling and dwelling units occupied pursuant to this section shall be occupied for permanent residence

purposes, as defined in paragraph a of subdivision eight of section four of this chapter.

(16) (*removed*); and

The Appellant’s Position

WHEREAS, the Appellant asserts that the LNO should be issued for the following primary reasons: (1) the use of the Building for short-term occupancy of no less than one week was permitted at the time the CO was issued and MDL § 248 allowed Class A SRO units to be rented for periods of one week or more; and (2) Chapter 225 of 2010, an amendment to the MDL which requires that short-term residences may not be less than 30 days, applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant asserts that in 1943 and 1960, when the Building was issued COs permitting single room occupancy units, the MDL provided that SRO units may be lawfully rented and occupied for periods of no less than a week; and the legislative history of the 1939 enactment of MDL § 248(16), New York State case law, and independent scholarly research clearly support the statutory provision that there is a weekly minimum applied to the period of occupancy; and

WHEREAS, the Appellant states that in 1943, when the Building was issued a CO permitting SRO units, the plain language of MDL § 248 (16) – “No room shall be rented in any such building for a period of less than a week” - permitted the SRO Units to be rented for periods of no less than one week; and

WHEREAS, the Appellant relies on the text of MDL § 248 adopted in 1939 (the “Pack Bill”) and in effect in 1943; and

WHEREAS, the Appellant states that DOB is correct that in 1960, the MDL included definitions for Class A and Class B Multiple Dwelling, however, even if the 1960 text were operative, as was the case in 1939, these definitions did not define the length of permitted occupancy for Class A and Class B Multiple Dwelling, only that Class A must have been occupied, as a rule, for permanent residence purposes and Class B, as a rule, transiently; and

WHEREAS, the Appellant also considers the MDL § 248(16) in effect when the 1960 CO was issued - “it shall be unlawful to rent any room in any such dwelling for a period of less than a week;” and

WHEREAS, the Appellant asserts that the CO permits the Building to be used for single room occupancy and that prior to the MDL Amendment, the prior use of the Building was for short-term residences, in which occupants’ stay was restricted to no less than one week; and

WHEREAS, the Appellant agrees that MDL § 248(16) allows tenants to *pay* on a weekly basis, but there is not any basis to conclude that *occupancy* was for a 30-day minimum; and

WHEREAS, the Appellant asserts that the legislative history, court statements, and scholarly research support the conclusion that MDL § 248(16) expressly and implicitly permitted the SRO units to be lawfully occupied for periods of no less than a week and that it applied to both rental and

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occupancy; and

WHEREAS, the Appellant asserts that prior to the 2010 MDL Amendment (the “MDL Amendment”), the use of the Building was in compliance with MDL § 248(16) in that all rooms were rented for periods of no less than one week; and

WHEREAS, the Appellant asserts that based on the communication surrounding the Pack Bill’s enactment during the Great Depression, it had multiple purposes including protecting occupants in multiple dwelling rooming houses from fire and to set up minimum standards for sanitation, maintenance, and operation and to provide health and safety protections for the visitors of the 1939-1940 World’s Fair who sought accommodations in excess of what the city’s hotels could provide; and

WHEREAS, the Appellant cites to the City of New York v. 330 Continental LLC, 60 A.D.3d 226 (1st Dept 2009) decision on whether the City was entitled to a preliminary injunction for the point that the court stated that SROs were entitled to short term rental of a week; and

WHEREAS, the Appellant also cites to scholarly research on New York City during the Great Depression which states that the city lifted regulations that prevented the operation of SROs and connected it to the World’s Fair needs; and

WHEREAS, as to the use and preservation of rights, the Appellant asserts that (1) since at least 1979, and most likely since 1943, the Building has been occupied by residential stays of no less than a week; (2) the right to rent the SRO Units for residential occupancies of no less than a week has been accrued; (3) the savings clause of MDL § 366 provides that the codification of Sections 1 through 4 of Chapter 225 of the Laws of 2010 will not impair the right to continue to rent the SRO Units for occupancies of no less than one week; and (4) Section 8 of the Laws of 2010 was not codified in the MDL and did not impair the Appellant’s accrued rights; and

WHEREAS, the Appellant asserts that since the existing CO permits weekly occupancy, it is irrelevant whether or not the Building had been historically occupied for stays as short as one week; and

WHEREAS, however, the Appellant asserts that it has submitted affidavits attesting to the fact that since at least 1979 (when the owner purchased the Building) and most likely since 1943 (when the first CO was issued), the policy of the Imperial Court has been that rooms may be rented and occupied for residential stays for periods of as short as one week; and

WHEREAS, the Appellant’s submissions include: an affidavit from the owner’s family member who has worked at the Building since 1979; an affidavit from the son of the prior owner who worked at the Building from 1979 to 2005; five affidavits from Building tenants; eight affidavits from Building employees; and affidavits from the Building’s; and

WHEREAS, the Appellant represents that after January 2013, Imperial Court’s policy was changed to conform to DOB’s interpretation and therefore rooms are rented and

occupied for periods of no less than one month; and

WHEREAS, the applicant states that DOB has failed to produce documentation to support the assertion that the MDL ever restricted occupancy of rooms rented weekly to periods of 30 days or more; and

WHEREAS, the Appellant asserts that it has accrued a right to rent and occupy the SRO units on a weekly basis as of 1943, and again in 1960, when the COs were issued based on compliance with the MDL then in effect; and

WHEREAS, as to the MDL Amendment, effective in 2011, which specifies that short-term residences may not be less than 30 days, the Appellant asserts that it applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant states that MDL § 366 (1) and (4) are savings clauses which dictate that the MDL provisions apply prospectively; specifically, MDL § 366(1) “the repeal of any provision this chapter, or the repeal of any provisions of any statute of the state or local law, ordinance, resolution or regulation shall not affect or impair any act done, offense committed or right accruing, accrued or acquired . . . prior to the time of such repeal, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent and in the same manner as if such provisions had not been repealed;” and (4) “No existing right or remedy of any kind shall be lost or impaired by reason of the adoption of this chapter as so amended unless by specific provision of a law which does not amend all articles of this chapter;” and

WHEREAS, the Appellant asserts that the MDL Amendment does not contain any “specific provision” that an existing right to rent for seven days or more has been “lost or impaired” as a result of the MDL Amendment therefore the “right” or the owner to rent units for periods of seven days or more may be continued; and

WHEREAS, the Appellant also cites to MDL § 13, which provides that “nothing . . . shall be construed to require any change in the construction, use or occupancy of any multiple dwelling lawfully occupied as such on April eighteenth, nineteen hundred twenty-nine, under the provisions of all local laws, ordinances, rules and regulations applicable thereto on such date; but should the occupancy of such dwelling be changed to any other kind or class after such date, such dwelling shall be required to comply with the provisions of section nine;” and

WHEREAS, the Appellant asserts that the Building was constructed as a “tenement” in 1906 and lawfully occupied on April 18, 1929, so nothing in the MDL requires any change in the use or occupancy of the Building; and

WHEREAS, the Appellant asserts that because the Building was operated in compliance with the MDL prior to the MDL Amendment, the use of the Building for stays of no less than one week may be continued; and

WHEREAS, accordingly, the Appellant states that if the Board determines that MDL § 248(16) applied both to rental and occupancy, then MDL § 366 would permit the Appellant to continue to rent the SRO Units for weekly occupancy; and DOB’s Position

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WHEREAS, DOB asserts that its denial of the LNO request was proper for the following primary reasons: (1) the Building has a CO and the CO does not permit the Class A New Law tenement to be occupied for periods of less than 30 days; and (2) the MDL Amendment did not change DOB's interpretation of the occupancy authorized by the CO, but rather clarified existing provisions related to occupancy of Class A Multiple Dwellings; and

WHEREAS, DOB asserts that contrary to the Appellant's arguments, the MDL never permitted weekly occupancy of the Building and the 1943 and 1960 COs are consistent with that position; and

WHEREAS, DOB asserts that the 1960 version of the MDL is applicable and not the 1939 version since the most recent CO (issued in 1960) resulted from a 1958 Alteration Application; however, both versions of the MDL distinguish transient occupancy from permanent occupancy and would therefore be consistent with DOB's interpretation; and

WHEREAS, DOB notes that under both the 1939 MDL and the 1960 MDL, Class A use was distinguished from "transient" use; weekly occupancy is more appropriately associated with transient use; and

WHEREAS, thus DOB cites to the 1958-2011 text of MDL § 248 (16): "it shall be unlawful to *rent* [an SRO room] for less than a week." (emphasis added); and

WHEREAS, DOB's position is that the former MDL § 248 (16) restricts the payment term to a minimum of one week but does not similarly identify the minimum occupancy period; and

WHEREAS, DOB also notes that the term "occupancy" appears throughout the MDL and could have been used in lieu of "rental" if the weekly rental minimum requirement were intended to authorize weekly occupancy; and

WHEREAS, DOB asserts that the weekly rental provision of the 1939 Pack Bill explained that the bill's weekly rental provision governed only rental payments and not occupancy; and

WHEREAS, DOB states that while there is no definition of the term "rental" in the MDL, the common understanding of the word is that it governs payment, and not occupancy and in the definition of "Class A" the MDL does not provide that it should be "rented" for permanent residence purposes, but uses the term "occupied;" and

WHEREAS, DOB states that there is nothing in the statute to suggest that rental and occupancy should be treated as equivalents; and

WHEREAS, DOB notes that in 1958, the MDL contained the term "permanent residence purposes" and defined a "Class A multiple dwelling as a multiple dwelling which is occupied, as a rule, for permanent residence purposes;" it defined a "Class B multiple dwelling" as "a multiple dwelling which is occupied as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals;" and

WHEREAS, DOB states that according to the 1960 CO, the building is a "New Law Tenement Class 'A' Multiple Dwelling and Single Room Occupancy" which means that it

must be occupied as a Class A multiple dwelling which mandates occupancy be for "permanent residence purposes;" and

WHEREAS, DOB asserts that it is consistent with the principle of statutory construction that a statute or ordinance be construed as a whole and that its sections be considered together and with reference to each other; and

WHEREAS, accordingly, DOB asserts that MDL § 248(16) must be read in conjunction with the MDL §§ 4(8) and (9) in effect in 1960 which define Class A and Class B occupancies; and

WHEREAS, DOB cites to MDL §§ 4(8) and (9) which define the terms "Class A" and "Class B" multiple dwellings, use the term "occupied," and provide that a Class A multiple dwelling is to be occupied for "permanent residence purposes", while a Class B multiple dwelling is to be occupied transiently;" and

WHEREAS, DOB notes that MDL § 248 states that "a dwelling occupied pursuant to [section 248] shall be deemed a Class A dwelling;" the definition of "single room occupancy in MDL § 4(16) further states that "When a class A multiple dwelling is used wholly or in part for a single room occupancy, it remains a Class A multiple dwelling;" and

WHEREAS, DOB states that according to MDL § 4 (8), a Class A multiple dwelling is to be occupied for "permanent residence purposes;" and

WHEREAS, DOB consulted Merriam Webster's dictionary which defines the word "permanent" as "continuing or enduring without fundamental or marked change," while the word "transient" is defined as "not lasting long" and "passing through or by a place with only a brief stay or sojourn;" and

WHEREAS, DOB states that the plain meaning of "permanent" resident cannot be construed to include a person who occupies a hotel room for only a week; and

WHEREAS, DOB asserts that common sense supports a conclusion that one does not become a permanent resident of a location by virtue of a one-week stay and that such stay is more consistent with a "transient" occupancy See Connors v. Boorstein, 4 N.Y. 2d 172, 175(1958) (interpreting statutory terms as matter of common sense.); 440 East 102nd Street Corp. v. Murdock, 285 N.Y. 298, 309 (1941)(citing "common use and understanding" in defining statutory terms); Kupelian v. Andrews, 233 N.Y. 278, 284 (1922) (statutory terms construed in a manner consistent with "common experience"); and

WHEREAS, DOB notes that pursuant to NYC Charter § 643, DOB is the agency responsible for interpreting the MDL in the first instance and DOB has consistently interpreted Class A permanent residence to require a minimum occupancy of 30 days, treating Class A "permanent" occupancy as the equivalent of J-2 Building Code occupancy and Class B "transient" occupancy as the equivalent of J-1 day-to-day or weekly occupancy; and

WHEREAS, DOB asserts that its interpretation is consistent with the principles of statutory interpretation that a statute be interpreted consistent with common sense - in this

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case weekly turnover would not commonly be understood to be permanent occupancy – and that a statute must be construed as a whole such that MDL § 248(16) which prohibits rental of any room in and Class A SRO for a period of less than one week must be interpreted in conjunction with MDL §§ 4(8) and (9) which define Class A and Class B occupancies in terms of occupancy and not rental; and

WHEREAS, DOB notes that single room occupancy units are suitable only for permanent residence purposes, because while MDL § 248 required some upgrades, there was no requirement that these units comply with the more stringent fire safety requirements applicable to transient units; and

WHEREAS, DOB also notes that MDL § 248 was enacted in 1939, during the Great Depression, when weekly rates might be preferred over daily rates which would likely result in a higher weekly cost and that weekly rates would be preferred to monthly rates, because those sums would be potentially easier for people to save than a higher monthly sum; and

WHEREAS, DOB states that the Court’s decision in City of New York v. 330 Continental LLC was not a decision on the merits and the Appellant’s citations are *dicta*; and

WHEREAS, DOB states that the decision issued in Continental was issued in response to the City’s request for a preliminary injunction to enjoin the defendants in that case from using the disputed premises transiently, pending final determination of the action of the case and that the excerpts cited from that case are non-binding *dicta* used to explain the court’s determination that the City had failed to establish a right to a preliminary injunction; and

WHEREAS, DOB notes that the court stated that, “[i]n view of the as-yet unresolved vagueness and ambiguity of the language of the MDL and the ZR that the City seeks to enforce, it cannot be said that the City has demonstrated a clear right to the drastic remedy of preliminary injunction;” the decision was not a final ruling on the case which ultimately settled with the defendants agreeing to use the subject premises for “permanent residence purposes” consistent with the City’s interpretation of the term, meaning for thirty consecutive days or longer; and

WHEREAS, DOB concludes that since the Continental litigation settled and since it was only a decision on the preliminary injunction motion and not a decision on the merits of the case, the City had no basis to appeal; the City then clarified this historical interpretation in Chapter 225 of the Laws of 2010; and

WHEREAS, as to the MDL Amendment, DOB asserts that the amendments contained in Chapter 225 of the Laws of 2010 (and the 1960 change to MDL § 248) did not change what had been its interpretation (for at least 40 years) of what “permanent residence purposes” meant, which was the occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more;” and

WHEREAS, DOB states that, instead, the purpose of the amendments was as stated in the law, a “clarification” of the DOB’s historical interpretation relating to occupancy of Class

A multiple dwellings;” and

WHEREAS, DOB notes that the bill was enacted “to fulfill the original intent of the law as construed by enforcing agencies, including the New York City Department of Buildings” (See “New York State Senate Introducer’s memorandum in Support, reprinted in New York State Archives’ Legislative History/Bill Jacket for the Laws of 2010, Chapter 225); and

WHEREAS, finally, DOB notes that Section 8 of the amendments provides that it “shall apply to all buildings in existence on such effective date and to buildings constructed after such effective date;” therefore, as clarifying amendments, the amendments are not to be applied only prospectively; and

WHEREAS, DOB asserts that since the Building was required to be occupied permanently (for 30 days or more) both prior to Chapter 225 and after, no existing right to rent for seven or more days has been lost or impaired as a result of the MDL amendments and transient use which was never permitted cannot be continued pursuant to the MDL savings clauses; and

WHEREAS, DOB states that prior to the adoption of Chapter 225, MDL §§ 4(16) and 248(1), the Building was a Class A multiple dwelling subject to MDL § 4(8)’s requirement that it be occupied for permanent residence purposes with “permanent residence” meaning occupancy of 30 days or more and not weekly occupancy; and

WHEREAS, DOB notes that it issued violations for illegal transient occupancy prior to the 2011 enactment of the MDL Amendment; and

The Board’s Conclusion

WHEREAS, the Board agrees with DOB that the Multiple Dwelling Law and the Building’s COs never permitted occupancy of the premises for weekly stays, and therefore there is no “existing right or remedy that is lost,” and the MDL’s savings clauses do not apply; and

WHEREAS, the Board agrees that the provisions of the MDL must be read together and that (1) the CO classification of Class A SRO is informed by the definition of Class A occupancy as permanent occupancy; and (2) the internal MDL references, dictionary definitions, plain meaning, common sense, and the legislative intent all support DOB’s conclusion that permanent occupancy requires stays of periods of at least 30 days; and

WHEREAS, the Board agrees with DOB that the text in effect at the time of the 1960 CO issuance applies, but would reach the same conclusion even if the text in effect in 1943 applied; and

WHEREAS, the Board notes that although the relevant MDL text has been amended since 1939, the underlying principles, including common sense concepts of time and residency, have not been redefined and that a seven-day stay would have never satisfied a requirement for permanent occupancy; and

WHEREAS, the Board finds that the distinctions between Class A and Class B and permanent and transient were understood at the time the CO was issued and there is not any evidence that in 1943 or 1960, at the issuance of the

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COs, that DOB accepted a rental term of any less than a month; and

WHEREAS, the Board does not find support for the Appellant's assertion that the MDL in effect in 1943 expressly or implicitly reflected that the SRO Units could be lawfully rented and occupied for weekly periods; and

WHEREAS, the Board does not see any indication in the legislative history that there was a greater need for transient (weekly) occupancy rather than for shorter payment terms; and

WHEREAS, further, the Board notes that DOB is the agency empowered to interpret the MDL in the first instance and that the MDL allows it to create greater restrictions; and

WHEREAS, the Board accepts DOB's interpretation of the legislative history and finds that the Appellant's focus on the fleeting goals of the World's Fair, derived from trade organizations' interests and the scholarly discussion of housing during the Great Depression is unpersuasive; and

WHEREAS, the Board notes that there are public policy reasons to require greater safety measures for transient or truly temporary accommodations and permanent accommodations and finds the fact that the Pack Bill only required that the Building comply with MDL § 248 is consistent with a finding that Class A SROs are a form of permanent occupancy rather than transient; and

WHEREAS, the Board notes that the 1939 amendments encouraged the improvement of conditions of buildings which had been built for one form of Class A permanent use but have been converted to another much denser Class A occupancy; and

WHEREAS, the Board notes that the issuance of the CO in 1960 with the occupancy classification of Class A for the first time – meaning permanent occupancy – supports DOB's conclusion that the approval was reviewed pursuant to the 1958 MDL because if the owner at the time believed that the newly defined Class A classification changed the meaning of the operative MDL provisions then he would have had an interest in revising the classification of the Building rather than obtaining a new CO with the new Class A classification; and

WHEREAS, the Board notes that the Appellant contends that the issuance of a CO certifies that the Building "conforms substantially to the approved plans and specifications, and to the requirements of the building code and all other laws and ordinances, and of the rules and regulations of the Board of Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued" and that such reliance actually supports a conclusion that DOB issued the CO pursuant to the 1958 clarified text, which the owner would have been aware of; and

WHEREAS, the Board notes that the 1943 CO only identifies the building as a New Law Tenement and Single Room Occupancy but not also as Class A; and

WHEREAS, the Board finds it logical to conclude that the 1943 CO classification and the 1960 CO classification

had the same meaning, just as the 1939 MDL text and 1958 MDL text did; and

WHEREAS, the Board finds that all three discussed versions of the MDL support the point that there is a distinction between Class A and Class B occupancy in that Class A and its regulatory provisions apply to permanent occupancy and Class B applies to transient; and

WHEREAS, the Board notes that the 1946 MDL defined "single room occupancy" as the occupancy of a single room separated from all other rooms within an apartment in a multiple dwelling and that "[w]hen a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling;" and

WHEREAS, accordingly, the Board finds that SROs were established clearly within the definition of Class A multiple dwellings and Class A multiple dwellings are to be occupied "as a rule for "permanent residence purposes," which is not satisfied by stays of one week; and

WHEREAS, as to the MDL Amendment and the Appellant's invocation of the savings clauses, the Board accepts DOB's position that the amendment served to clarify language and clearly articulate the position that it had held for decades that permanent occupancy requires a minimum stay of 30 days; the Board does not see any support for a conclusion that a Class A SRO with a minimum seven-day term is a separate protected class of occupancy; and

WHEREAS, the Board agrees with DOB that no right was ever established or accrued for seven-day occupancy and thus there is no right to save; and

WHEREAS, the Board notes that the MDL Amendment does not allow property owners to maintain transient use with permanent use fire safety conditions; transient use must meet transient use requirements; and

WHEREAS, the Board finds that there has always been a necessary distinction between transient and permanent occupancy and that is furthered by the CO identification of Class A and Class B occupancies; and

WHEREAS, the Board notes that the Building was constructed and occupied for several decades as a New Law Tenement Multiple Dwelling and that it was converted to a New Law Tenement Class A Multiple Dwelling SRO building; in both iterations, the Building accommodated permanent occupancy, identified as Class A since 1960; based on the legislative history and the economic climate, DOB's assertion that the rental payment system and not the need for more transient occupancy is the change which sparked the 1939 amendments and the Building's conversion; and

WHEREAS, the Board notes that approximately one-quarter of the Building is occupied by the Statutory Units which are permanent tenancies; and

WHEREAS, the Board notes that the Appellant sought to gather additional Building occupancy records, but the Board does not find those records to be relevant because the Building was constructed as a Class A apartment building, and has since then had COs only for a Class A SRO, there is no basis to assert that it was actually a Class B use; and

WHEREAS, the Board does not find that evidence

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related to the occupancy of the Building is relevant to the interpretation of the MDL text; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's denial of a request for a Letter of No Objection, which would authorize occupancy of the Building for a minimum period of seven days rather than 30 days.

Adopted by the Board of Standards and Appeals, June 10, 2014.

45-07-A

APPLICANT – Eric Palatnik, P.C., for Nader Kohanter, owner.

SUBJECT – Application April 25, 2014 – Application to permit an extension of time to complete construction and obtain a certificate of occupancy under the Common Law vested rights doctrine for a mixed- used residential community facility approved under the previous R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue "O" and Avenue "N", Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

80-11-A, 84-11-A & 85-11-A & 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

277-12-BZ

CEQR #12-BSA-032X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner.

SUBJECT – Application September 14, 2014 – Special Permit (§73-49) to allow 130 parking spaces on the roof of an accessory parking structure. M1-1 zoning district.

PREMISES AFFECTED – 1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Road, Block 4226, Lot 16, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 23, 2012, acting on DOB Application No. 220198275, reads:

Proposed roof parking in an M1-1 zoning district is contrary to ZR Section 44-11 and requires a special permit; and

WHEREAS, this is an application under ZR § 73-49 to permit 130 parking spaces on the rooftop of a three-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and WHEREAS, the subject site

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is the Hutchinson Metro Center, an approximately 42-acre parcel bounded by the Hutchinson River Parkway, Pelham Parkway, Bassett Avenue, Eastchester Road, Loomis Street, and Waters Place, partially within an M1-1 zoning district and partially within an R5 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 16, 35, 40, 55, 70, and 73; it has 1,826,000 sq. ft. of lot area; the vast majority of the site (1,814,571 sq. ft.) is within an M1-1 zoning district and the balance (11,249 sq. ft. – all within Lot 35) is located within an R5 zoning district; and

WHEREAS, the applicant notes that a companion case has been filed to permit rooftop parking for 109 automobiles on Lot 15 (1240 Waters Place) under BSA Cal. No. 251-13-BZ; and

WHEREAS, the site is occupied by a series of buildings, both completed and under construction, which comply with the applicable bulk regulations and are used for parking, offices, retail space, and various community facility uses; and

WHEREAS, the applicant proposes to construct a three-story parking garage on Lot 16; the parking garage will include rooftop parking for 130 automobiles, which is not permitted as-of-right in an M1-1 district; accordingly, the applicant seeks a special permit pursuant to ZR § 73-49; and

WHEREAS, the applicant states that the proposed rooftop parking is not required but is permitted accessory parking for the various uses on the zoning lot; likewise, the proposed parking complies with ZR § 44-12, which limits non-required accessory parking spaces to 150; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant notes that there are no buildings or open uses immediately adjacent to the proposed rooftop parking, nor are there any residential uses that would be impacted; similarly, the applicant states that the nearest uses are commercial buildings or parking facilities; and

WHEREAS, at hearing, the Board requested additional information regarding the proposed lighting of the rooftop parking area; and

WHEREAS, in response, the applicant provided a plan sheet detailing the proposed lighting, which has been designed to reflect inward and away from adjacent uses; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR § 73-49 have been met; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 12-BSA-032X, dated September 13, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617.5 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 73-49 to permit 130 parking spaces on the rooftop of a three-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 9, 2014” - seven (7) sheets; and *on further condition*:

THAT the maximum number of parking spaces on the rooftop will be 130, as approved by DOB;

THAT all lighting on the roof will be directed down and away from adjacent uses;

THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

THAT the above conditions will appear on the certificate of occupancy;

THAT the parking layout will be reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

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Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

178-13-BZ

CEQR #13-BSA-157Q

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) to allow an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 20, 2013, acting on DOB Application No. 400441143, reads:

Use Group 6 eating and drinking in C1 is contrary to drive thru section ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-2 (R5) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on April 1, 2014, with a continued hearing on May 6, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, the subject site located on the southeast corner of the intersection of Mott Avenue and Beach Channel Drive, within a C1-2 (R5) zoning district; and

WHEREAS, the site has approximately 85 feet of frontage along Mott Avenue, approximately 212 feet of frontage along Beach Channel Drive, 19,733 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated by McDonald's) with 2,728 sq. ft. of floor area (0.14 FAR), an accessory drive-through, and 21 accessory parking spaces; and

WHEREAS, the Board first exercised jurisdiction over the site when, on June 16, 1998, under BSA Cal. No. 49-94-BZ, it granted a special permit to allow an existing accessory drive-through for a term of five years, to expire on June 16, 2003; and

WHEREAS, on July 18, 2006, under BSA Cal. No. 352-05-BZ, the Board granted a special permit to allow operation of the drive-through for a term of five years, to expire on July 18, 2011; in addition, the Board authorized a reconfiguration of the site; and

WHEREAS, the applicant now seeks to reinstate the prior special permit; however, a new application is required under the Board's Rules of Practice and Procedure; and

WHEREAS, the applicant notes that the drive-through has operated continuously since the expiration of the prior special permit and that the site will remain in substantial compliance with the previously-approved plans; and

WHEREAS, the Board notes that a special permit is required for the proposed accessory drive-through facility in the C1-2 (R5) zoning district, pursuant to ZR § 73-243; and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for ten vehicles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant states that the site circulation—with two curb cuts on Beach Channel Drive and one on Mott Avenue—has been consistent for the past 16 years and that it causes minimal interference with existing traffic patterns; and

WHEREAS, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-2 (R5) zoning district; as noted above, the proposed 21 parking spaces is well in excess of the nine parking spaces required under ZR § 36-21; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant states that Mott Avenue is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores,

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supermarkets, banks, offices and retail stores; and

WHEREAS, the applicant states that such uses and the surrounding residential neighborhoods they support are substantially oriented toward motor vehicle use; and

WHEREAS, the Board notes that the applicant has submitted photographs of the site and the surrounding streets, which supports this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that most of the surrounding properties are occupied by exclusively commercial uses; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-through and adjacent uses in the form of a fence, trees, shrubs, and planting beds; and

WHEREAS, accordingly, the applicant represents that the drive-through facility satisfies each of the requirements for a special permit under ZR § 73-243; and

WHEREAS, at hearing, the Board raised concerns about the landscaping, fencing, and excessive signage at the site; additionally, the Board directed the applicant to submit photos depicting the adjacent properties and requested additional information regarding the volume of late-night traffic at the site; and

WHEREAS, in response, the applicant submitted amended plans showing additional shrubbery and fencing along the southern lot line and signage in compliance with the C1 district regulations, and the applicant submitted photos depicting the adjacent properties; and

WHEREAS, as to volume of late-night traffic at the site, the applicant states that, on average, five to ten cars visit the site per hour throughout the night; the applicant notes that weekend nights tend to be busier than weekday night; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-157Q dated June 17, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within a C1-2 (R5) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 27, 2014"- (7) sheets; and *on further condition*:

THAT the term of this grant will expire on June 10, 2019;

THAT the premises will be maintained free of debris and graffiti;

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage will conform to C1 zoning district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 10, 2014.

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233-13-BZ

APPLICANT – Law office of Fredrick A. Becker, for Kayvan Shadrouz, owner.

SUBJECT – Application August 12, 2013 – Special Permit (§73-622) for an enlargement of an existing single family residence, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2413 Avenue R, North side of Avenue R between East 24th Street and Bedford Avenue. Block 6807, Lot 48. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated July 11, 2013, acting on DOB Application No. 320486675, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required;
3. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceed the maximum permitted;
4. Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed side yard is less than the minimum required;
5. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on May 13, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the north side of Avenue R, between East 24th Street and Bedford Avenue, within an R3-2 zoning district; and

WHEREAS, the site has 26 feet of frontage along Avenue R and 2,730 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,470 sq. ft. of floor area (0.54 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to increase the floor area of the home from 1,470 sq. ft. (0.54 FAR) to 2,754.5 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,365 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space from 70 percent to 59 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 30 percent to 41 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant seeks to maintain and extend the site’s existing side yard widths of 3’-0” and 6’-8 $\frac{3}{8}$ ”; the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 43’-6” to 26’-0”; a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot 1.01 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this assertion, the applicant identified six homes on the subject block and the blocks directly east and west with FARs ranging from 1.0 to 1.06; the applicant notes that five of the six homes were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board expressed concerns regarding proposal’s compliance with the building envelope required in an R3-2 zoning district; and

WHEREAS, in response, the applicant amended its plans to reflect a proposed envelope in accordance with the R3-2 regulations; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental

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Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 7, 2014"– (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,754.5 sq. ft. (1.01 FAR), a minimum open space of 59 percent, a maximum lot coverage of 41 percent, side yards with minimum widths of 3'-0" and 6'-8³/₈", and a minimum rear yard depth of 26'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

250-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group, LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, June 10, 2014.

251-13-BZ

CEQR #14-BSA-029X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hutch Realty Partners, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-49) to allow 109 parking spaces on the roof of an accessory parking structure. M1-1 zoning.

PREMISES AFFECTED – 1240 Waters Place, east side of Marconi Street, approximately 1678 ft. north of intersection of Waters Place and Marconi Street, Block 4226, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 30, 2013, acting on DOB Application No. 220246197, reads:

Proposed roof parking in an M1-1 zoning district is contrary to ZR Section 44-11 and requires a special permit; and

WHEREAS, this is an application under ZR § 73-49 to permit 109 parking spaces on the rooftop of a four-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the subject site is the Hutchinson Metro Center, an approximately 42-acre parcel bounded by the Hutchinson River Parkway, Pelham Parkway, Bassett Avenue, Eastchester Road, Loomis Street, and Waters Place, partially within an M1-1 zoning district and partially within an R5 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 16, 35, 40, 55, 70, and 73; it has 1,826,000 sq. ft. of lot area; the vast majority of the site (1,814,571 sq. ft.) is within an M1-1 zoning district and the balance (11,249 sq. ft. – all within Lot 35) is located within an R5 zoning district; and

WHEREAS, the applicant notes that a companion case has been filed to permit rooftop parking for 130 automobiles on Lot 16 (1776 Eastchester Road) under BSA Cal. No. 277-12-BZ; and

WHEREAS, the site is occupied by a series of buildings,

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both completed and under construction, which comply with the applicable bulk regulations and are used for parking, offices, retail space, and various community facility uses; and

WHEREAS, the applicant proposes to construct a four-story parking garage on the M1-1 portion of Lot 35; the parking garage will include rooftop parking for 109 automobiles, which is not permitted as-of-right in an M1-1 district; accordingly, the applicant seeks a special permit pursuant to ZR § 73-49; and

WHEREAS, the applicant states that the proposed rooftop parking is not required but is permitted accessory parking for the various uses on the zoning lot; likewise, the proposed parking complies with ZR § 44-12, which limits non-required accessory parking spaces to 150; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant notes that there are no buildings or open uses immediately adjacent to the proposed rooftop parking, nor are there any residential uses that would be impacted; similarly, the applicant states that the nearest uses are commercial buildings or parking facilities; and

WHEREAS, at hearing, the Board requested additional information regarding the proposed lighting of the rooftop parking area; and

WHEREAS, in response, the applicant provided a plan sheet detailing the proposed lighting, which has been designed to reflect inward and away from adjacent uses; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR § 73-49 have been met; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-029X, dated August 26, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617.5 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 73-49 to permit 109 parking spaces on the rooftop of a four-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 9, 2014"- ten (10) sheets; and *on further condition*:

THAT the maximum number of parking spaces on the rooftop will be 109, as approved by DOB;

THAT all lighting on the roof will be directed down and away from adjacent uses;

THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

THAT the above conditions will appear on the certificate of occupancy;

THAT the parking layout will be reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

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316-13-BZ

APPLICANT – Slater & Beckerman, PC, for 210 Joralemon Street Condominium, owner; Yoga Works, Inc., lessee.

SUBJECT – Application December 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Yoga Works*) in the cellar and first floor of the building. C5-2A (Special Downtown Brooklyn) zoning district.

PREMISES AFFECTED – 210 Joralemon Street, southeast corner of Joralemon Street and Court Street, Block 266, Lot 7501 (30), Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 6, 2013, acting on DOB Application No. 320447370, reads, in pertinent part:

[Proposed] physical culture establishment requires special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2A zoning district, within the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a 13-story commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection Court Street and Joralemon Street, within a C5-2A zoning district, within the Borough Hall Skyscraper Historic District; and

WHEREAS, the site has approximately 180 feet of frontage along Court Street, approximately 274 feet of frontage along Joralemon Street, approximately 36 feet of frontage along Livingston Street, and 62,390 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 13-story commercial building; and

WHEREAS, the proposed PCE will occupy 6,040 sq. ft. of floor space – 1,160 sq. ft. of floor area on the first story and 4,880 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as YogaWorks; and

WHEREAS, the applicant represents that the services

at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 6:00 a.m. to 9:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the Landmarks Preservation Commission approved the alterations to the building and the proposed signage by Certificates of Appropriateness dated October 9, 2012 and July 23, 2013, respectively; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA077M dated March 12, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type I Negative Declaration prepared in accordance with Article 8 of the New York State

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Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C5-2A zoning district, within the Borough Hall Skyscraper Historic District, the operation of a PCE in portions of the cellar and first story of a 13-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 13, 2014” – three (3) sheets and “Received March 14, 2014” – two (2) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

319-13-BZ

CEQR #14-BSA-081M

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the minimum parking requirements (§25-23) to permit the construction of a new, 682 unit, 32-story mixed used building. 123 parking spaces are proposed. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated December 12, 2013, acting on Department of Buildings Application No. 121237303, reads in pertinent part:

ZR 25-23 – Required number of parking spaces not provided for number of dwelling units (UG 2) proposed; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, Congressman Charles B. Rangel and Assemblyman Robert J. Rodriguez provided testimony in support of the application; and

WHEREAS, the subject site occupies the eastern portion of the block bounded by East 124th Street, Madison Avenue, East 125th Street, and Park Avenue; and

WHEREAS, the site comprises Tax Lots 24 and 33, has 315 feet of frontage along East 125th Street, 215 feet of frontage along East 124th Street, approximately 202 feet of frontage along Park Avenue, and 53,486 sq. ft. of lot area; and

WHEREAS, Lot 24 is occupied by a five-story building with 46,098 sq. ft. of floor area (0.86 FAR) utilized by the New York College of Podiatric Medicine; Lot 33 is vacant; the applicant represents that the owner of Lot 24 has transferred its 162,798 sq. ft. of unused floor area to Lot 33; and

WHEREAS, the applicant proposes to construct on Lot 33 a 32-story mixed residential and commercial building with 595,734 sq. ft. of floor area (11.14 FAR), 55,722 sq. ft. of commercial floor area, 682 dwelling units, and 123 accessory parking spaces; and

WHEREAS, the applicant states that pursuant to ZR § 25-23, one parking space is required for 40 percent of the 682 new dwelling units; thus, 273 parking spaces are required; and

WHEREAS, the applicant seeks a variance to provide only 123 accessory parking spaces; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of

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the Metro North railway viaduct and station; (2) the proximity of the Second Avenue subway line; and (3) subsurface conditions, including a deep bedrock elevation, the presence of groundwater, which will require substantial dewatering prior to construction of the foundation, and significant contamination, and; and

WHEREAS, the applicant states that the nearby presence of the Metro North railway viaduct and station uniquely impacts the site and will result in premium construction costs; and

WHEREAS, in particular, the applicant states that the site is bounded by the elevated Metro North railway viaduct and station, which extends from East 124th Street to East 126th Street, and that, in the area adjacent to the site, the viaduct and station are supported by a steel platform on steel bents spaced every 65 feet, which are supported by five columns, which are in turn supported by eight-foot-long by eight-foot-wide pier foundations, five of which are located within the sidewalk along East 125th Street approximately ten feet from the site's eastern property line; and

WHEREAS, the applicant notes that, according to the engineering consultant's report (the "Langan Report"), the pier foundation for the station extends approximately 14.5 feet to 18.5 feet below sidewalk grade and is supported on uncontrolled fill material; accordingly, the applicant asserts that development of the site requires special excavation procedures and a specialized foundation system in order to protect the Metro North structures, at significant cost; and

WHEREAS, the applicant contends that its proximity to the Metro North station and its support columns is unique, in that only four blocks along Park Avenue from East 123rd Street to East 126th Street, have a similar condition; and

WHEREAS, the applicant states that the proximity of the Second Avenue subway line will include the construction of an underground station under East 125th Street extending from Third Avenue to mid-block between Park Avenue and Madison Avenue and that such proposed station creates unique hardships in the development of the site; and

WHEREAS, specifically, the applicant states that future station and subway tunnels will be directly adjacent to the site's northern property line; as such, it is expected that the New York City Transit Authority will require certain easements, including a permanent easement for the space below the cellar of any new building at the site (for the installation of rock anchors to support the subway station) and a temporary easement at the cellar and ground level during the construction period of the station; and

WHEREAS, in addition, the applicant states that, based on the Langan Report, the Transit Authority will likely require transfer of all foundation loads beyond the theoretical influence line; further, per the Langan Report, the applicant must employ a specialized foundation installation procedure involving the drilling of a permanent steel casing to the top of rock, coring a hole in the rock, advancing casing to the influence line, and then drilling a rock socket below the influence line, in order to prevent any shedding of gravity loads to the rock adjacent to the tunnels; accordingly, the

applicant states that protecting the Second Avenue subway line will significantly increase its construction costs; and

WHEREAS, in addition, the applicant notes that pile driving is not permitted within 50 feet of the structural boundary of either the Metro North station or the Second Avenue subway tunnel; as such, an alternative, more expensive foundation system must be employed; and

WHEREAS, further, the applicant asserts that even if adjacency to a subway line is not a unique site condition in the surrounding neighborhood, adjacency to both a subway line and an elevated train station is unique; and

WHEREAS, as to the subsurface conditions, the applicant states that, based on the Langan Report, the bedrock at the site ranges from 59 feet to 110 feet below grade, which is 80 percent deeper than the bedrock at surrounding sites; as such, in addition to being more technically complex due to the presence of subway tunnels and above-ground structures, the foundation must be deeper than typical foundations; and

WHEREAS, in addition, the applicant states that the Langan Report identified groundwater at depths ranging from 10 feet to 15 feet below grade; thus, dewatering prior to the construction of the foundation will be required; and

WHEREAS, as to contamination, the applicant states that the New York State Department of Environmental Conservation has classified the site as a Brownfields Cleanup Site due to the presence of elevated concentrations of metals, polynuclear aromatic hydrocarbons, polycyclic chlorinated biphenyls, and lead at concentrations that make it hazardous waste; additionally, a level of petroleum has been identified atop the water table; as such, the applicant represents that approximately 35,000 tons of soil will need to be excavated from the site and properly disposed of, and a vapor barrier must be constructed beneath the foundation to prevent the migration of contaminants; and

WHEREAS, the applicant represents that the total cost premium resulting from the site's unique physical conditions are \$16,627,727 and that such cost involves the construction of only one below-grade level; and

WHEREAS, accordingly, the applicant states that the construction of one or more sub-cellars to accommodate parking is not feasible due to the site's unique physical conditions; and

WHEREAS, likewise, the applicant asserts that it is not feasible to locate parking within above-grade portions of the building because doing so would require elimination of valuable retail space, which is necessary to offset the premium construction costs noted above; and

WHEREAS, to support this assertion, the applicant analyzed a complying building with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), one retail story (21,912 sq. ft. of commercial floor area), 682 dwelling units and 304 parking spaces ("Scenario A"); thus, the Scenario A building is similar to the proposal all respects except the number of parking spaces and the amount of retail space; and

WHEREAS, thus, the applicant contends that there is a direct nexus between the physical hardships of the site and the requested parking waiver; and

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WHEREAS, based upon the above, the Board finds that the site's adjacency to the Metro North railway viaduct and station and the Second Avenue subway line and the site's many subsurface conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in support of this assertion, the applicant submitted a feasibility study that analyzed Scenario A and the proposal; and

WHEREAS, in addition, in response to the Board's comments, the applicant examined two other alternative scenarios with larger dwelling units: (1) a complying development with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and (2) a complying development with only 30 stories, 360,790 sq. ft. of floor area (6.75 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and

WHEREAS, the applicant concluded that only the proposal would realize a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by its diversity; the area has low-, medium-, and high-density residential and community facility buildings, with ground floor retail uses along both East 125th Street and Park Avenue; and

WHEREAS, the applicant states that the intersection of Park Avenue and East 125th Street is a vibrant commercial intersection, which is well-served by public transit and heavily trafficked by pedestrians and automobiles alike; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site shares occupies the same zoning lot with as the New York College of Podiatric Medicine, which will be located directly west of the proposed building; the only other building adjacent to the site is a four-story multiple dwelling with ground floor retail; directly north of the site across East 125th Street is the historic Corn Exchange building, which is slated for redevelopment; directly east of the site is, as mentioned above, the elevated structure for the Metro North train; directly south of the site is a parking lot; and

WHEREAS, turning to bulk, the applicant represents

that, with the exception of parking, the proposal complies in all respects with the bulk regulations applicable in the subject C4-7 zoning district; and

WHEREAS, as to parking, the applicant states that the site is well-served by several subway and bus lines, and the Metro North station and that number of parking spaces required for the development under ZR § 25-23 are unnecessary; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information regarding car ownership rates in the proposed building, off-street parking utilization, and parking supply; and

WHEREAS, in response, the applicant provided a study, which concluded: (1) based on census data and the location of the site, the building's 682 dwelling units will contribute a parking demand of 118 vehicles (which the applicant notes is less than the 123 parking spaces proposed); (2) 40 percent of the households expected to occupy the proposed building are likely to utilize street parking rather than paying for a parking space within the building; and (3) on- and off-street parking supply within ¼ mile of the site is more than adequate to accommodate the parking demand generated by the proposed building; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the Second Avenue subway, the Metro North station, and the subsurface conditions on the site; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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 an unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-081M, dated March 26, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, (E) designation No. E-201 regarding noise and air quality was placed on the subject property in

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conjunction with the rezoning of the property in April 30, 1008, under ULURP No. 080099ZMM; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 6, 2014”– thirty (30) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 595,734 sq. ft. (11.14 FAR), a maximum of 682 dwelling units, and a minimum of 123 accessory parking spaces, as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

331-13-BZ

CEQR #14-BSA-093K

APPLICANT – Warshaw Burstein, LLP, for Isaac Chera, owner; 2007 86th Street Fitness Group, LLP, lessee.

SUBJECT – Application December 31, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within the existing building at the Premises. C4-2 zoning district.

PREMISES AFFECTED – 2005 86th Street aka 2007 86th Street, north side of 86th street, west of its intersection with 20th Avenue, Block 6346, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 18, 2013, acting on DOB Application No. 320817345, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C4-2 zoning district pursuant to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of the application, on condition that: (1) the 85th Street side of the property is not used for entrance or egress; (2) the gate on the 85th Street side is secured at all times; and (3) additional bike racks on 86th Street are provided, if permitted by law; and

WHEREAS, the subject site is a through lot located on the block east of 20th Avenue between 85th Street and 86th Street, within a C4-2 zoning district; and

WHEREAS, the site has approximately 11 feet of frontage along 20th Avenue, 70 feet of frontage along 85th Street, 70 feet of frontage along 86th Street, and 14,330 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with a mezzanine; the building has a total of 13,990 sq. ft. of floor area (0.98 FAR); and

WHEREAS, the applicant states that it proposes to enlarge the mezzanine level by 3,550 sq. ft., resulting in a total building floor area of 17,540 sq. ft. (1.22 FAR); and

WHEREAS, the proposed PCE will occupy 16,880 sq. ft. of floor area – 12,540 sq. ft. of floor area on the first story and 4,340 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

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operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed PCE's use of the 85th Street entrance to the site; and

WHEREAS, in response, the applicant provided photographs showing that the 85th Street entrance to the site is enclosed with a gated fence; the applicant also represented that the PCE would not have an entrance on the 85th Street side of the building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA093K dated December 23, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR

§§ 73-36 and 73-03 to permit, on a site within a C4-2 zoning district, the operation of a PCE in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 11, 2014" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

7-14-BZ

APPLICANT – Greenberg Traurig, LLP, for Rockaway Realty LLC, owner; 1380 Rockaway Parkway Fitness Group, LLC, lessee.

SUBJECT – Application January 16, 2014 – Special Permit (§73-36) to permit the conversion of the existing on-story, plus cellar to a physical culture establishment (*Planet Fitness*) in connection with an application to rezone the property from an R5D/C1-3(Z) to an R5D/C2-3(ZD).

PREMISES AFFECTED – 1380 Rockaway Parkway, west side of Rockaway Parkway, midblock between Farragut Road and Glenwood Road, 204.85' south of Farragut Road, Block 8165, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 17, 2013, acting on Physical culture or health establishment is not permitted in C1-3 (R5D); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R5D) zoning district, the operation of a physical culture establishment (“PCE”) in a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Rockaway Parkway between Farragut Road and Glenwood Road, within a C2-3 (R5D) zoning district; and

WHEREAS, the site has 83 feet of frontage along Rockaway Parkway and 8,353 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with 7,960 sq. ft. of floor area (0.95 FAR); and

WHEREAS, the proposed PCE will occupy the entire building, including the cellar, which has an additional 7,960 sq. ft. of floor space, for a total PCE size of 15,920 sq. ft. of floor space; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant notes that parking for the historic commercial uses at the site was authorized on the adjacent parcel (Block 8165, Lot 21) by the Board under BSA Cal. No. 799-51-BZ; however, the applicant represents that the proposed PCE does not require parking and its employees and patrons will not park on Lot 21 and will instead use the public parking facility across Rockaway Parkway on Block 8166, Lot 14; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; massage services will not be offered; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the

surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, an environmental review of the proposed action was conducted by the New York City Department of City Planning (“DCP”) and is discussed in the Environmental Assessment Statement, CEQR No. 14DCP038K dated December 12, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved, that the Board of Standards and Appeals adopted DCP’s Negative Declaration dated December 16, 2013 prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C2-3 (R5D) zoning district, the operation of a PCE in a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 8, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT egress will be as reviewed and approved by DOB;

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THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

16-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saul Greenberger & Rochelle Greenberger, owners.

SUBJECT – Application January 27, 2014 – Special Permit (§73-621) for the enlargement of an existing one family residence, contrary to floor area, lot coverage and open space (§23-141). R3-2 zoning district

PREMISES AFFECTED – 1648 Madison Place, west side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 9, 2014, acting on DOB Application No. 320814669, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio is greater than the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required;
3. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space and lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in *The City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Madison Place, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the site has 31 feet of frontage along Madison place and 3,100 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,415 sq. ft. of floor area (0.46 FAR); and

WHEREAS, the applicant proposes to horizontally enlarge the cellar, first, and second stories at the rear of the building, resulting in an increase in floor area from 1,415 sq. ft. (0.46 FAR) to 1,968 sq. ft. (0.64 FAR); the maximum permitted floor area is 1,860 sq. ft. (0.6 FAR), which includes 310 sq. ft. of floor area (0.1 FAR) that must be provided directly under a sloping roof; and

WHEREAS, the applicant seeks a decrease in open space from 73 percent to 63 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks an increase in lot coverage from 27 percent to 37 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted an excerpt of the 1929 Belcher-Hyde map to demonstrate that the building existed as a residence well before June 30, 1989, which is the operative date within the subject R3-2 zoning district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space results in an open space that is at least 90 percent of the minimum required; and

WHEREAS, as to the lot coverage, the applicant represents that the proposed increase in lot coverage results in a lot coverage that does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the floor area ratio, the applicant

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represents that the proposed floor area does not exceed 110 percent of the maximum permitted; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, at hearing, the Board directed the applicant to clarify the extent to which the enlargement includes floor area directly under a sloping roof; and

WHEREAS, in response, the applicant clarified that it proposes an additional 277 sq. ft. of floor area directly under a sloping roof; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space and lot coverage, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 27, 2014"- (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 1,968 sq. ft. (0.64 FAR), a minimum open space ratio of 63, and a maximum lot coverage of 37 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

20-14-BZ
CEQR #14-BSA-107M

APPLICANT – Sandy Anagnostou, Assoc, AIA, for 310-312 Owners Corp. LLC, owner; John Vatisas, NHMME, lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to allow the operation of a physical culture (*Massage Envy*) establishment on the first floor of an existing mixed use building. C1-9A zoning district.

PREMISES AFFECTED – 312 East 23rd Street, south side of East 23rd Street 171' east from the corner of 2nd Avenue and East 23rd Street, Block 928, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 31, 2013, acting on DOB Application No. 121828335, reads, in pertinent part:

ZR 32-10 – Proposed physical culture establishment in a C1-9A (zoning district) is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9A zoning district, within the Special Transit Land Use District, the operation of a physical culture establishment ("PCE") in portions of the first story of a 12-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 23rd Street between First Avenue and Second Avenue, within a C1-9A zoning district, within the Special Transit Land Use District; and

WHEREAS, the site has approximately 125 feet of frontage along East 23rd Street and 12,344 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is occupied

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by a 12-story mixed residential and commercial building with 117,871 sq. ft. of floor area (9.5 FAR); and

WHEREAS, the applicant notes that the building was historically two separate buildings, which were combined, as evidenced by Certificate of Occupancy No. 85578, issued March 27, 1984; and

WHEREAS, the proposed PCE will occupy 3,497 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as Massage Envy; and

WHEREAS, the applicant represents that the services at the PCE include spa services and massage by New York State-licensed masseurs and masseuses; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 8:00 a.m. to 10:00 p.m. and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist, CEQR No. 14BSA107M dated February 3, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C1-9A zoning district, within the Special Transit Land Use District, the operation of a PCE in portions of the first story of a 12-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2014" – Five (5)

sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all massages must be performed by New York State licensed massage therapists;

THAT the hours of operation for the PCE will be limited to Monday through Saturday, from 8:00 a.m. to 10:00 p.m. and Sunday, from 8:00 a.m. to 9:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

216-13-BZ & 217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

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254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

256-13-BZ thru 259-13-BZ

260-13-A thru 263-13-A

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – Variance (§72-21) to permit four detached and semi-detached homes, contrary to side yard (§23-461) and open area (§23-891) regulations, and bulk non-compliances resulting from the location of a mapped street (§23-45). The proposed buildings are also located within the bed of a mapped street, contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

279-13-BZ

APPLICANT – Warshaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar, first through third floors of a new building to be constructed. C6-4M and M1-6 zoning districts.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150' West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

284-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 168-42 Jamaica LLC, owner; 168 Jamaica Avenue Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and the first floor of the building. R6-A/C2-4 (Downtown Jamaica) zoning district.

PREMISES AFFECTED – 168-42 Jamaica Avenue, south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot 22, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one-story residential home, contrary to front yard (§23-45); side yard (§23-161); floor area and lot coverage (§23-141) and off street parking requirements (§25-621(B)). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

299-13-BZ

APPLICANT – Eric Palatnik, P.C., for David Gerstenfeld, owner; Michael Nejat, lessee.

SUBJECT – Application November 1, 2013 – Special Permit (§73-126) to allow the partial legalization and connection of two adjacent ambulatory diagnostic treatment health care facilities (UG4). R3-A zoning district.

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PREMISES AFFECTED – 4299 Hylan Boulevard, between Thornycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39 & 41, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner. SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

15-14-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Ink., owner.

SUBJECT – Application January 24, 2014 – Variance (§72-21) to permit the enlargement of an existing school building (*Holy Cross Greek Orthodox Church*), contrary to floor area (§24-111), sky exposure plane (§24-54), and accessory parking spaces (§25-31). R2 zoning district.

PREMISES AFFECTED – 12-03 150th Street, southeast corner of 150th Street and 12th Avenue, Block 4517, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

27-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 496 Broadway LLC., owner.

SUBJECT – Application February 7, 2014 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar, contrary to use regulations (§42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 496 Broadway, east side of Broadway between Broome Street and Spring Street, Block 483, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for continued hearing.

39-14-BZ

APPLICANT – Francis R. Angelino, Esq., for 97-101 Reade LLC and II LLC, owner; Exceed Fitness LLC, lessee.

SUBJECT – Application March 17, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Exceed Fitness*). C6-3A zoning district.

PREMISES AFFECTED – 97 Reade Street, between West Broadway and Church Street, Block 145, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

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*CORRECTION

The resolution adopted on September 12, 2006, under Calendar No. 124-05-BZ and printed in Volume 91, Bulletin Nos. 34-36, is hereby corrected to read as follows:

124-05-BZ

CEQR #05-BSA-131M

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – Under Z.R. § 72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §§ 35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 595, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 31, 2005, acting on Department of Buildings Application No. 104054871, reads, in pertinent part:

“Proposed . . . lot coverage is not permitted in that it is contrary to ZR 23-145 of 80% for corner lot.

Proposed partial piece of building does not comply with side yard regulations. In addition the same area is subject to court regulations and does not comply with court regulations. ZR 35-32 and ZR 23-83.

Proposed parking area exceeds size permitted as per ZR 13-143. Maximum size permitted [is] 200 times 2 cars and 300 times 1 car for commercial store. (Maximum 700 square feet).

Proposed building exceeds setback regulations as per ZR 35-24.

Proposed location of curb cut for parking access is not permitted in that it is contrary to ZR 13-142A ‘shall be located not less than 50 feet from the intersection of any two street lines’”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, setback, side yard, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-

143, 35-24, and 13-142A; and

WHEREAS, the building, which will be built in accordance with the ZR’s Quality Housing regulations, will have a total Floor Area Ratio (FAR) of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); and

WHEREAS, ten dwelling units and three parking spaces will be provided; and

WHEREAS, the proposed street wall height is 60 ft., and the total height is 120 ft.; and

WHEREAS, the FAR, density, street wall height, and total height comply with applicable C6-2A district regulations; in particular, the FAR complies with the 6.5 maximum for buildings with a community facility component; and

WHEREAS, the Board also notes that all of the proposed uses are as of right; and

WHEREAS, however, the proposed building is non-compliant as follows: (1) the proposed lot coverage is 96.6% (80% is the maximum permitted); (2) the proposed trapezoidal building form, at the proposed lot coverage, will not comply with the required width for a side yard, or, alternatively, a court; (3) a small portion of the dormer will be located within the required 15 ft. setback at the 10th and 11th floors; (4) the proposed garage area is 862.9 sq. ft. (700 sq. ft. is the maximum permitted, based upon the proposed occupancies); and (5) the curb cut will be approximately 34 ft. from the intersection of Greenwich and Canal Streets (curb cuts are required to be at least 50 ft. away from the intersection); and

WHEREAS, the Board notes that the application as originally filed contemplated an eleven-story building, with the same waivers as indicated above, but also with a non-complying FAR of 7.98 (6.02 is the maximum permitted), a street wall height of 111 ft. (85 ft. is the maximum street wall height), and no setback at 85 ft. (a fifteen ft. setback is required at this height); and

WHEREAS, as discussed in greater detail below, the Board expressed serious concerns about the project as originally proposed, primarily because it did not credit certain of the alleged unique physical conditions that allegedly created the need for the FAR, street wall and setback waivers, and, to a lesser extent, because the proposed building appeared to be out of context with the surrounding built conditions; and

WHEREAS, while the applicant continues to contest the position of the Board as to its view as to the alleged hardships, the proposal was nevertheless modified to the current version near the end of the hearing process; and

WHEREAS, a public hearing was held on this application on January 24, 2006 after due notice by publication in the *City Record*, with continued hearings on April 25, 2006 and June 20, 2006 and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

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WHEREAS, Community Board 2, Manhattan, upon review of the initial version of the application, supported waivers for lot coverage, curb cut distance, and parking, but expressed opposition to the proposed FAR waiver; and

WHEREAS, the Department of City Planning opposed the initial version of this application, expressing concerns about the proposed FAR and resulting street wall height, and noting that the degree of waiver was not warranted and that the street wall height would be out of character with the built conditions in the neighborhood; and

WHEREAS, this application was opposed by the Canal West Coalition and certain individual neighbors of the site (hereinafter, collectively referred to as the "opposition"); relevant arguments of the opposition are discussed below; and

WHEREAS, the subject premises is located on the northwest corner of the intersection of Canal and Greenwich Streets, and has a lot area of 3,136 sq. ft.; and

WHEREAS, the applicant notes that the site is located near the historic shoreline and is within Zone A – High Hazard Flood Plain; and

WHEREAS, while the site is currently in a C6-2A zoning district, it was formerly located within an M1-6 zoning district; the site was rezoned as part of the Hudson Square rezoning, approved by the City Council in 2003; and

WHEREAS, the applicant notes that during the CEQR review of the rezoning, what is known as an "E" designation was attached to the site, due to its history of gas station use; and

WHEREAS, the applicant states because of the "E" designation, prior to development, testing of the soil is mandated and soil remediation may be needed; further, the "E" designation also establishes minimum noise attenuation requirements for development on the site, due to its location on Canal Street; and

WHEREAS, the site has 59 ft. of frontage on Greenwich Street, and approximately 96 ft. of frontage on Canal Street; and

WHEREAS, the applicant states the site is irregularly shaped, since the two frontages meet at an acute angle, forming a 55 degree wedge at the intersection, and since the northern lot line of the site is bowed and pinched in the center; and

WHEREAS, the site is currently fully paved and partially occupied by a one-story brick garage and former gas station at its western edge, and with a billboard on the eastern side; all of the existing improvements on the site will be removed in anticipation of the new building; and

WHEREAS, the applicant states that the commercial space, the community facility space, the three-car garage, and the residential lobby will be located on the first floor of the proposed building, and the residential units will be located on the second through 11th floors; outdoor terraces will also be provided for some of the units, and recreation space will be located on the second floor; and

WHEREAS, as noted above, however, the proposed building requires certain waivers; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying building: (1) the site is small and irregularly shaped; (2) the site is proximate to a major thoroughfare, Canal Street; (3) the site is burdened with an "E" designation; and (4) the site is within the flood plain; and

WHEREAS, as to size and shape, the applicant states this causes two immediate problems: (1) the irregular shape makes it impractical to comply with side yard, courtyard, and lot coverage regulations, since an as of right building would have to either leave the narrow northwestern corner of the site undeveloped, resulting in a non-complying court or yard, or, if it was developed, it would result in non-usable space that would only increase construction costs without generating revenue from such space; and (2) the sharply angled lot boundaries and pinched interior of the site require the building to have a high "face" to "plate" ratio, which increases construction costs; and

WHEREAS, the Board agrees that the size and the shape of the site are unusual, and that significant constraints are placed on an as of right development; and

WHEREAS, in particular, the Board credits the applicant's explanation of how the size and shape of the site make it impractical to develop the site in a way that complies with lot coverage, and courts and yards; and

WHEREAS, the Board observes that the imposition of these requirements on the site would lead to the creation of impractical floor plates, which would diminish the overall sell out value of the proposed units and, on each floor increase, the amount of space (cores and common areas) that do not generate revenue; and

WHEREAS, the requested lot coverage, yard and court waivers eliminate the impact that the site's size and shape have on development; and

WHEREAS, however, the Board disagrees that the costs associated with the high "face" to "plate" ratio constitute an unnecessary hardship; instead, the Board concludes that the value of the units, given the multiple exposures arising from the site's shape, and the resulting views, will result in a unit sell out value that will compensate for any increased construction costs that may arise from the shape of the building and "face" to "plate" ratio; and

WHEREAS, the applicant also states that the shape of the site necessitates the additional curb cut and parking waivers; and

WHEREAS, specifically, the applicant notes that the shape and the location of the site make it impossible to place the entire curb cut for the garage entrance anywhere but within 50 feet of the intersection of Canal and Greenwich Streets; and

WHEREAS, the applicant further notes that placement of the curb cut on Canal is infeasible since it is a heavily trafficked street, and the Greenwich Street frontage is too small to accommodate the entire width of the 20 ft. curb cut without locating it within 50 feet of the intersection; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the maximum

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parking area requirement of 700 sq. ft. while still providing a reasonable layout for three parking spaces (which is an allowed amount in the subject zoning district and which increases the overall viability of the project); thus, the additional 163 sq. ft. is necessary; and

WHEREAS, the opposition argues that the size and the shape of the lot are not unique, in that there are numerous irregularly shaped lots in the immediate vicinity; and

WHEREAS, the applicant responds that the subject site is one of the few in the area that is both irregular in shape and very small in size, and cited to the submitted radius diagram in support of this response; and

WHEREAS, additionally, the applicant also explained that of the 19 other irregular lots (out of the total of 71 lots on Blocks 594 and 595), nine are good candidates for an assemblage, and six are already fully developed; and

WHEREAS, the applicant concludes that irregularity is a characteristic likely to create hardship for only a few vacant or under utilized lots in the area; and

WHEREAS, the Board concurs with this response, and further observes that to meet the finding set forth at ZR § 72-21(a), a site does not have to be the only site in the vicinity that suffers from a particular hardship; and

WHEREAS, instead, the Board must find that the hardship condition cannot be so prevalent that if variances granted to every identically situated lot, the character of the neighborhood would significantly change (see *Douglaston Civic Ass'n, Inc. v. Klein*, 435 N.Y.S.2d 705 (1980)); and

WHEREAS, the Board concludes that while there are other small, irregularly shaped sites in the subject zoning district, the conditions affecting the site are not so prevalent that the uniqueness finding cannot be made; and

WHEREAS, in sum, the Board finds that the requested lot coverage, yard, court, curb cut and parking waivers are necessitated by the site's shape and size, and location on Canal Street; and

WHEREAS, when the applicant also proposed FAR, setback and street wall height waivers, evidence was submitted regarding the costs associated with the "E" designation and the location of the site within the flood plain (which leads to soil conditions that would require pile foundation construction); and

WHEREAS, because the FAR waiver request has been withdrawn, these alleged conditions and any costs associated with them are no longer relevant; and

WHEREAS, however, the Board did not find the "E" designation a sufficiently unique condition to warrant consideration as a hardship for which relief was warranted, given that almost all of the sites within the Hudson Square rezoning received such designations; specifically, the Board notes that 56 lots on adjacent and nearby blocks have "E" designations; and

WHEREAS, further, the Board does not view the costs related to the "E" designation (for sound attenuation and soil testing) as an unnecessary hardship, given that they are minimal and because the noise attenuation adds value to the units; and

WHEREAS, the Board also was not persuaded that the site's soil conditions and location within the flood plain was a unique physical hardship; and

WHEREAS, the Board observes that the uniqueness of the site's sub-surface conditions was not conclusively established by the applicant; and

WHEREAS, the Board acknowledges that the "E" designation and the soil conditions (which, as stated above, require that piles be used) add to overall development costs; and

WHEREAS, however, the Board concludes that these additional costs are overcome by the increased sell out value of the units – an increase that results from the waivers that the Board is granting; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's size and shape, and its location on Canal Street - creates unnecessary hardship and practical difficulty in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed a complying 18,862 sq. ft., 6.02 FAR nine-story building with retail on the ground floor and residential units on the floor above; and

WHEREAS, the study concluded that this complying scenario would not realize a reasonable return, since a complying building would have a compromised and inefficient floor plate that would depress sell out value; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed height is comparable to two residential projects directly across the Greenwich Street from the site: one is ten stories, and one is 14 stories; and

WHEREAS, the applicant also cites to other sites in the vicinity that are either developed with buildings of comparable height in the process of being developed: an eight-story building proposed for the small block bounded by Canal, Greenwich and Watts Streets, and a nine-story building across Canal Street; and

WHEREAS, finally, the applicant notes that the façade treatment is in keeping with development in the area, and was designed to reduce any appearance of bulk; and

WHEREAS, the Board notes that the current proposal respects the floor area, height and street wall requirements of the subject zoning district; and

WHEREAS, accordingly, in terms of its bulk, the current proposal is much more contextual with the surrounding neighborhood than the original proposal, which

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required waivers of FAR and street wall; and

WHEREAS, the Board notes that the lot coverage and yard/court waivers will not negatively impact any neighboring building, nor will the resulting building negatively affect the character of the neighborhood; and

WHEREAS, the Board observes that lot coverage is complied with above 60 feet, and the waiver is only needed for the floors beneath this height; and

WHEREAS, finally, the Board notes that after eliminating the FAR and street wall requests, the applicant initially submitted a building proposal which showed a fully compliant height, setback, and dormer; and

WHEREAS, however, concerns were raised as to the dormer above 60 feet, at the street line and adjacent to the lot line along Greenwich Street; and

WHEREAS, accordingly, the current proposal includes a dormer above 60 ft., set back from the street wall; and

WHEREAS, as a result of such configuration and the need to accommodate a sufficient amount of floor area on each floor, the dormer at the 10th and 11th floors modestly encroaches into the setback (approximately 13 sq. ft. at the 10th floor, and approximately 34 sq. ft. at the 11th floor); and

WHEREAS, the Board further notes that the small setback waiver is the result of the desire to enhance light and air for the neighboring property, and that the design change that will incorporate this waiver was in response to certain concerns of the opposition; and

WHEREAS, the Board further notes that the curb cut waiver will not affect traffic patterns in the area, and will eliminate the need for a curb cut on Canal Street, as well as decreasing on street parking demand; and

WHEREAS, the Board observes that while the proposed garage does not comply with the minimum size requirement, the layout has been reviewed and is acceptable; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size, shape and location of the lot; and

WHEREAS, in addition to the complying scenario discussed above, the applicant also analyzed its initial proposal, a 6.02 FAR proposal with lot coverage, street wall height, setback, yard and court waivers, and a 6.02 FAR alternative, with lot coverage and yard/court waivers, but no setback waiver; and

WHEREAS, the applicant concluded that both 6.02 FAR scenarios and the 7.6 FAR scenario would not realize a reasonable return, but that the proposal would; and

WHEREAS, however, the Board expressed concern about the claimed revenue to be generated by the residential units, and suggested that it was understated; and

WHEREAS, in particular, the Board questioned whether the comparables used to generate the sell out value were too

low and not an accurate reflection of unit values in the area; and

WHEREAS, further, as noted above, the Board did not view the initial proposal as the minimum variance; and WHEREAS, after modifying the proposal, the applicant submitted a new feasibility study of the proposal that reflected an updated site value, sell out value, construction costs estimate, and interest rates; and

WHEREAS, the applicant also maximized the value of the as of right FAR and height by removing the proposed cellar, thereby decreasing construction costs and increasing revenue; and

WHEREAS, the applicant notes that the unit prices were based on the pricing structure suggested by the opposition, ranging from \$1,200 per square foot for the smaller units to \$1,950 per square foot for the larger units; previously, the per square foot value was approximately \$1,000; and

WHEREAS, the Board has reviewed this revised study and finds it acceptable, as the sell out value has appropriately increased to reflect actual market conditions; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board notes that the opposition has made numerous arguments as to this application, many of which are no longer relevant because of the change in the proposal, particularly the arguments made in opposition to the floor area and height waivers; and

WHEREAS, particularly, concerns about inflated construction costs (i.e. piles) for site conditions that may not be unique are no longer relevant since the FAR waiver request has been withdrawn; further, concerns that the originally proposed FAR and street wall did not comport with the character of the neighborhood are likewise irrelevant; and

WHEREAS, as noted above, the Board agrees that certain of the cited physical conditions were not established as unique, and were therefore discounted; and

WHEREAS, the Board also notes that the financial data was updated, and that acceptable revenue projections were submitted; and

WHEREAS, however, the opposition continues to oppose the application even as currently proposed, and set forth a summary of its arguments in a submission dated August 15, 2006; and

WHEREAS, for the reasons cited by the applicant in its August 25, 2006 submission, the Board finds that none of the opposition arguments as to the current proposal are persuasive; and

WHEREAS, finally, the Board disagrees with the opposition's contention that the building as proposed should have been presented to the Community Board for another hearing and vote; and

WHEREAS, neither the City Charter nor the Board's Rules not mandate that further Community Board action is necessary when a proposed building is reduced in scale; and

WHEREAS, all that is required by the Board's Rules is

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that the Community Board be copied on submissions made by the applicant to the Board; here, that occurred; and

WHEREAS, while the Rules provide that the Board may send an applicant back to the Community Board at its discretion, the Board has determined that this is unnecessary in this case; and

WHEREAS, the Board observes that the Community Board expressed approval of the lot coverage, curb cut and parking waivers, and only objected to the FAR and significant street wall waiver; as noted above, these waivers have been withdrawn; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA131M dated May 20, 2005; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, side yard, setback, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24, and 13-142(a); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 12, 2006"- ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: ten total dwelling units; three parking spaces; a total Floor Area Ratio of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR

of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); a street wall height of 60 ft., and a total height of 120 ft; lot coverage of 96.6%; no side yard or court; a garage area of 862.9 sq. ft.; a curb cut approximately 34 ft. from the intersection of Greenwich and Canal Streets; and setbacks as indicated on the BSA-approved plans;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building permit;

THAT all mechanicals and bulkheads shall comply with applicable regulations;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2006.

The resolution has been amended to correct the Block and Lot Number. Corrected in Bulletin Nos. 22-24, Vol. 99, dated June 19, 2014.

BULLETIN

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Tuesday, June 17, 2014**

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142-92-BZ	473-541 6 th Street, aka 502-522 8 th Avenue, Brooklyn
11-93-BZ	46-45 Kissena Boulevard, aka 140-01 Laburnum Avenue, Queens
326-09-BZ	37-10 Union Street, aka 38-15 138 th Street, Queens
49-11-BZ	135 West 20 th Street, Manhattan
611-52-BZ	35-35 24 th Street, Queens
751-78-BZ	200-15 Northern Boulevard, Queens
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3-14-BZ	12-22 East 89 th Street, Manhattan
57-14-BZ	1 New York Plaza, Manhattan

DOCKETS

New Case Filed Up to June 17, 2014

130-14-BZ

605 Fifth Avenue, East Side Fifth Avenue between East 48th & 49th Streets, Block 1284, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow for a health club(PCE) physical culture establishment will be on the entire fifth floor of a six-story commercial building, located within a C5-3 zoning district. C5-3 district.

131-14-BZ

549 West 146th Street, Northeast corner of Broadway and West 146th Street, Block 2078, Lot(s) 5, Borough of **Manhattan, Community Board: 9**. Variance (§72-21) to a use variance in a commercial retail use within a landmark designated former theater building in a R8/C1-4 zoning district. R8/C1-4, R7A district.

132-14-BZ

441 Rockaway Avenue, The premises is a through lot having frontage on Rockaway Avenue and Thatford Avenue just south of Pitkin Avenue, Block 3522, Lot(s) 9, 26, Borough of **Brooklyn, Community Board: 16**. Special Permit (§73-36) to allow the operation of a physical culture establishment(fitness center) on the cellar and first floor of the existing building, located within a C4-3 zoning district. C4-3 district.

133-14-BZ

175 Father Capodanno Blvd., Located in the Arrochar neighborhood a low density neighborhood on Staten Island East Shore, Block 3122, Lot(s) 118, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to waive bulk regulation for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program,located within an R3-1 zoning district. R3-1 district.

134-14-BZ

53 Doty Avenue, Located in the Arrochar neighborhood, a low density neighborhood on Staten Island's East Shore., Block 3124, Lot(s) 147, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to waive bulk regulation for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program, located within an R3-1 zoning district. R3-1 district.

135-14-A

19 Sunnymeade Village, Surrounded by Sunnymeade Village, Block 3122, Lot(s) 174, Borough of **Staten Island, Community Board: 2**. GCL 36 WAIVER: for reconstruction of a home that do not front on a unmapped street. Pursuant to Article 3 of the General City Law. R3-1 district.

136-14-BZ

16 Mapleton Avenue, In the inland area of the Midland Beach neighborhood of Staten Island, Block 3799, Lot(s) 45, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on property which are registered in the NYC Build it Back Program.: R3-1 district.

137-14-BZ

174 Kiswick Street, In the Inland area of the Midland Beach neighborhood of Staten Island., Block 3736, Lot(s) 21, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 district.

138-14-BZ

1099 Olympia Boulevard, In the Inland area of the Midland Beach neighborhood of Staten Island which were destroyed by Hurricane Sandy., Block 3804, Lot(s) 33, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 district.

139-14-BZ

555 Lincoln Avenue, In the Inland area of the Midland Beach neighborhood of Staten Sandy which were destroyed by Hurricane Sandy, Block 3804, Lot(s) 8, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 district.

DOCKETS

140-14-A

1016 East 16th 13th Street, between Avenue" and Avenue "K, Block 6714, Lot(s) 11, Borough of **Brooklyn, Community Board: 14**. Determination "Vested Rights: seeks a determination that the owner has acquires a common law vested rights to complete construction under the prior C4-3A/R6 zoning district. R5 district.

141-14-BZ

2465 Broadway, East side of Broadway, 50ft. South of intersection with West 92nd Street, Block 1239, Lot(s) 52, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to all a physical culture establishment with portions of an existing commercial building, located within a C4-6A zoning district. C4-6A(EC-3) district.

142-14-A

92 Fulton Street, Lot on the south side of Fulton Street, between William Street to the West and gold Street to the east, Block 77, Lot(s) 22, Borough of **Manhattan, Community Board: 1**. Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C6-4 zoning district. C6-4 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JULY 15, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 15, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

765-50-BZ

APPLICANT – Kenneth H. Koons, for R.G. Ortiz Funeral Home, Ink., owner.

SUBJECT – Application April 14, 2014 – Extension of Term (§11-411) of an approved variance permitting an existing one-story funeral parlor, which expired on November 20, 2013. C1-2 zoning district.

PREMISES AFFECTED – 1430-36 Unionport Road, eastside 43 feet South of Olmstead Avenue, Block 3933, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

88-92-BZ

APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) a previously granted variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.

PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.

COMMUNITY BOARD #10BX

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph Dweck, owner.

SUBJECT – Application December 31, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (Dolphin) on the second floor of a two-story commercial building which expired on January 1, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on February 5, 2009; Waiver of the Rules.

C4-2A zoning district.

PREMISES AFFECTED – 8701 4th Avenue, southwest corner of 4th Avenue and 87th Street, Block 6050, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEALS CALENDAR

92-14-A

APPLICANT – Greenberg Traurig, LLP, for MTS Propco. LPC/Rockpoint Group, LLC, owner.

SUBJECT – Application May 2, 2014 – Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements and legally required windows under MDL Sections 26 (7) & 30 for the construction of a residential addition to an existing building. C6-7/C6-6(MID) zoning district.

PREMISES AFFECTED – 790 7th Avenue, West 51st Street, Broadway, West 52nd Street and 7th Avenue, Block 1023, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #10M

ZONING CALENDAR

185-13-BZ

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to section 42-00 of the zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to permit the operation of a physical culture (*Health Club*) on the ground floor and cellar of an existing ten (10) story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue,

CALENDAR

property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

36-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for 201 Pearl LLLC., owner; Soulcycle Maiden Lane, LLC., lessee.

SUBJECT – Application February 27, 2014 – Special Permit (§73-36) to allow the construction of a physical culture establishment (*Soulcycle*) within a mixed use. C5-5(LM) zoning district.

PREMISES AFFECTED – 101 Maiden Lane aka 201 Pearl Street, northeast corner of Maiden Lane and Pearl Street, Block 69, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

47-14-BZ

APPLICANT – John M. Marmora, Esq., for RKR Properties, Inc., owner; McDonald's USA, LLC., lessee.

SUBJECT – Application March 26, 2014 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (McDonald's) with an accessory drive-through facility. C1-2/R5D zoning district.

PREMISES AFFECTED – 122-21 Merrick Boulevard, northwest corner of Merrick Boulevard and Sunbury Road, Block 12480, Lot(s) 32, 39, Borough of Queens.

COMMUNITY BOARD #12Q

55-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for RK&G Associates LLC., owner; 388 Athletic Club, LLC, c/o Stah Real Estate Com., lessee.

SUBJECT – Application April 8, 2014 – Special Permit (§73-36) to allow the physical culture establishment (*388 Athletic Club*) to operate on the fifth and sixth floors of a new 53 Story commercial and residential building. C6-45 zoning district.

PREMISES AFFECTED – 388 Bridge Street, aka 141 Lawrence Street, Block 152, Lot 1001/06, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 17, 2014
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

278-86-BZ

APPLICANT – Eric Palatnik P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 29, 2013 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (*White Castle*), which expired on November 26, 2011, amendment to the plans, and Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fteley Avenue thru to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for an accessory drive-through, which expired on January 18, 2013, and an amendment to permit a minor enlargement and certain modifications to the site plan; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, offers no objection to the application; and

WHEREAS, the subject site is located on a corner through lot bounded by Metcalf Avenue to the west, Bruckner Boulevard to the north, and Fteley Avenue to the east, within a C1-2 (R5) zoning district; and

WHEREAS, the site has 52,421 sq. ft. of lot area and is occupied by a one-story eating and drinking establishment (Use Group 6) with 2,755 sq. ft. of floor area (0.05 FAR), 56 parking spaces, and accessory drive-through; and

WHEREAS, the site is operated as a White Castle; its

hours of operation are 24 hours per day, seven per week; and

WHEREAS, the Board has exercised jurisdiction over the site since November 25, 1986, when, under BSA Cal. No. 278-86-BZ, the Board granted a special permit for the operation of a drive-through facility accessory to an eating and drinking establishment, for a term of five years; and

WHEREAS, the term was extended by the Board on April 7, 1992, for a term of ten years, to expire on November 25, 2001, and on December 4, 2001, for a term of ten years, to expire on November 25, 2011; and

WHEREAS, most recently, on April 24, 2012, under BSA Cal. No. 167-11-BZ, the Board authorized the demolition and reconstruction of the building at the site and an extension of the term of the grant for five years, to expire on April 24, 2017; and

WHEREAS, the applicant represents that the construction contemplated under BSA Cal. No. 167-11-BZ was never undertaken and that the owner seeks to surrender that grant, reinstate the grant under the subject calendar number, amend it to allow a minor enlargement (an increase of 34 sq. ft.) of the building, an increase in the surface area of the service window, and minor modifications to the site plan, and extend its term for an additional five years; and

WHEREAS, the applicant notes that neither the site circulation, nor the location of the curb cuts, nor the number of reservoir spaces for the drive-through will be materially altered under the revised site plan; likewise, the number of parking spaces (56) will remain as approved under the original grant; and

WHEREAS, based upon its review of the record, the Board finds that the proposed amendment and extension of term are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 25, 1986, so that as amended this portion of the resolution reads: “to permit the noted modification and an extension of the term of the special permit for an additional five years, to expire on June 17, 2019; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received April 16, 2014’- (8) sheets; and *on further condition*:

THAT the grant will expire on June 17, 2019;

THAT signage will comply with C1 regulations;

THAT the above conditions and all relevant conditions from prior grants will appear on the certificate of occupancy; and

THAT a certificate of occupancy will be obtained by June 17, 2015;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its

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jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 17, 2014.

142-92-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application March 20, 2014 – Amendment of a previously approved special permit (§73-48) for a community facility (*New York Methodist Hospital*). The application seeks to amend the approved plans to accommodate required accessory parking in a new ambulatory care facility (BSA Cal #142-92-BZ)

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block 1084, Lot 36, 164, 1001/1002, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previous approval, which, pursuant to ZR § 73-48, allowed the construction of 518 parking spaces contrary to ZR §§ 25-31 and 36-21; the proposed amendment seeks to: (1) enlarge the subject zoning lot; (2) reduce and reclassify certain parking spaces authorized under the special permit; and (3) permit other alterations related to the redevelopment of the site; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 29, 2014, and then to decision on June 17, 2014; and

WHEREAS, at the April 29, 2014 public hearing, the Board set a May 20, 2014 decision date; and

WHEREAS, however, subsequent to the April 29, 2014 hearing, a representative of Preserve Park Slope communicated with Board staff and NYM about its request for supplemental documents from NYM; the Board declined to request the documents and NYM declined to provide the documents directly; and

WHEREAS, Preserve Park Slope then sought judicial relief to obtain the documents in New York State Supreme Court by Order to Show Cause; and

WHEREAS, the court issued a stay which prohibited the Board from closing the hearing and rendering a decision as scheduled on May 20, 2014; on June 4, 2014, the court lifted the stay but did not issue a ruling on the subpoena request, which is pending; and

WHEREAS, a companion application for a variance

pursuant to ZR § 72-21 required for development of the site was filed under BSA Cal. No. 289-13-BZ and decided at the same hearing; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this application is brought on behalf of New York Methodist Hospital (“NYM”), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject site comprises the majority of Block 1084; it includes Tax Lots 164, 1001, and 1002, and has frontages along Fifth Street, Sixth Street, Seventh Avenue, and Eighth Avenue; the applicant notes that when the subject special permit was granted, the site comprised Lots 164, 1001, and 1002, however, at the time the lots were designated as Lots 1, 17, and 64; as for Lot 39, it was formed by the merger of former Lots 25, 26, 28, 40-44, 46, 48, and 50-59; and

WHEREAS, the site is located partially within an R6 (C1-3) zoning district, partially within an R6 zoning district, and partially within an R7B zoning district; and

WHEREAS, the site has approximately 510 feet of frontage along Fifth Street, approximately 696 feet of frontage along Sixth Street, 200 feet of frontage along Seventh Avenue, 200 feet of frontage along Eighth Avenue, and 120,569 sq. ft. of lot area; and

WHEREAS, the Board has exercised jurisdiction over the site since January 11, 1994, when, under the subject calendar number, the Board granted, pursuant to ZR §§ 72-21, 73-481, and 73-482, a variance and special permit to allow the construction of a five-story mixed commercial and medical office building (“MOB”) and a parking garage for 518 automobiles, contrary to ZR § 33-431 (height and setback), ZR §§ 22-10, 77-12, and 77-332 (location of entrance to a group parking facility accessory to commercial uses, ZR § 36-63 (required number of loading berths), ZR §§ 22-10, 36-683, 77-12, and 77-332 (enclosure of and location of entrance to loading berths), and ZR §§ 25-31 and 36-21 (maximum number of parking spaces); and

WHEREAS, the site is occupied by the MOB, a 12-story hospital building containing hospital-related facilities and staff dwellings (the “Wesley House”), the subject parking garage, which consists of three-below grade parking levels and surface parking, a surface parking lot on the southeast corner of the site, and a series of townhouses; and

WHEREAS, the applicant notes that, under the special permit, the parking spaces are designated required accessory spaces for retail uses (76 spaces), required accessory to the Wesley House (49 spaces), and permitted accessory spaces to hospital-related uses (393 spaces); and

WHEREAS, the applicant states that NYM seeks a variance to construct a new seven-story ambulatory care facility (the “Center for Community Health” or the “Center”) on adjacent Lot 39; the applicant states that, in connection with that proposal, it requests an amendment to the prior approval to allow: (1) enlargement of the subject zoning lot; (2) reduction and reclassification of parking spaces authorized

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under the special permit; and (3) other alterations to the site plan and to the existing garage related to the construction of the Center for Community Health; and

WHEREAS, as to the enlargement of the zoning lot, the applicant states that Lot 39 will be combined with the lots that are the subject of the prior variance and special permit (Lots 164, 1001, 1002) and the Center will be built on that portion of the new zoning lot; and

WHEREAS, as to the reduction and reclassification of parking spaces, the applicant states that 60 of the 393 permitted accessory parking spaces will be reclassified as required accessory parking for the Center, 49 of the 393 permitted accessory parking spaces will be reclassified as accessory to existing hospital uses within the MOB, and 38 of the 393 permitted accessory spaces will be eliminated to allow the construction of the Center's loading area; the result will be a decrease in the total number of permitted accessory parking spaces within the garage from 393 to 246 and an increase in the total number of required accessory spaces for new and existing hospital uses from 0 to 109; the designations for the required accessory parking for the retail (76 spaces) and the Wesley House (49 spaces) will not change; accordingly, the proposal reflects a net reduction in the total number of spaces authorized under the special permit from 518 to 480; and

WHEREAS, the applicant also notes that an additional parking garage will be constructed on the site to accommodate the 350 accessory spaces required in connection with the Center; and

WHEREAS, finally, as to the alterations to the site plan, the applicant states that portions of the existing garage must be demolished in order to accommodate the loading areas for the Center; and

WHEREAS, as addressed in BSA Cal. No. 289-13-BZ, the Board agrees with the applicant that the proposed changes to the existing parking garage and the proposed development of the Center for Community Health are in furtherance of NYM's programmatic needs as a non-profit teaching hospital and will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, based upon its review of the record, the Board finds the requested amendments to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution to permit the noted modifications; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 13, 2014'— eight (8) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its

jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 17, 2014.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C. for Joy Kiss Management, LLC, owner; Chen Qiao Huang (Good fortune Restaurant), lessee.

SUBJECT – Application December 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously approved variance (§72-21), which expired on March 20, 2012; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, reopening, an extension of term for the operation of an eating and drinking establishment, which expired on March 15, 2014, and an extension of time to obtain a certificate of occupancy, which expired on March 20, 2013; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in the City Record, with a continued hearing on May 20, 2014, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends disapproval of the application, citing the following concerns regarding the eating and drinking establishment at the site: (1) that the establishment is serving alcohol with an expired liquor license; (2) that it is being operated as a catering facility without a public assembly certificate of operation (“PA”) or an amended certificate of occupancy (“CO”); and (3) that it has open violations from the Department of Buildings (“DOB”); and

WHEREAS, the subject site is located on the northeast corner of the intersection of Kissena Boulevard and Laburnum Avenue, within a C2-2 (R3-2) zoning district; and

WHEREAS, the site has 40,830 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building operated as a restaurant (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over

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the subject site since May 6, 1958 when, under BSA Cal. No. 788-57-BZ, the Board granted a variance to permit the construction of a one-story storage garage and motor vehicle repair shop, with two gasoline dispensing pumps, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, on March 15, 1994, under the subject calendar number, the Board granted a special permit under ZR § 11-413 to permit the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking, for a term of ten years, which expired on March 15, 2004; and

WHEREAS, on October 5, 2010, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on March 15, 2014, and an amendment pursuant to ZR § 11-412 to permit certain modifications to the building; a condition of the grant was that a CO be obtained by October 5, 2011; and

WHEREAS, most recently, on March 20, 2012, the Board granted an extension of time to obtain a CO, to expire on March 20, 2013; and

WHEREAS, the applicant now requests an extension of term and an extension of time to obtain a CO; and

WHEREAS, at hearing, the Board directed the applicant to: (1) respond to the concerns of the community board; (2) remove the food storage trucks from the site; and (3) clarify the location and screening of the proposed garbage storage area; and

WHEREAS, in response, the applicant confirmed that: (1) alcohol is not available for purchase at the establishment; (2) it will be seeking a PA and a CO for a Use Group 6 eating and drinking establishment; (3) there is no catering (Use Group 9) at the site; and (4) the nine remaining open DOB violations are related to the lack of PA and CO for Use Group 6; and

WHEREAS, as to the food storage trucks, the applicant submitted photographs demonstrating that such trucks had been removed; and

WHEREAS, as to the garbage storage area, the applicant provided an amended plot plan, which details the location and screening of the area; the applicant also represents that there is a drain in the area and that the dumpster will be cleaned twice per day; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on March 15, 1994, to grant a one-year extension of time to obtain a certificate of occupancy, to expire on June 17, 2015 and to grant a ten-year extension of term, to expire on March 15, 2024; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 3, 2014' - (3) sheets; and on further condition:

THAT use of the site shall be limited to a restaurant (Use Group 6) with accessory parking for 65 automobiles;

THAT all signage shall comply with C2 zoning district regulations;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by June 17, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

326-09-BZ

APPLICANT – Bryan Cave LLP, for Flushing Commons Property Owner LLC, owner.

SUBJECT – Application April 10, 2014 – Extension of Time to Complete Construction of a previously approved special permit (§73-66) for the development of four mixed use buildings (*Flushing Commons*), which expires on July 27th 2014. C4-4 zoning district.

PREMISES AFFECTED – 37-10 Union Street aka 38-15 138th Street, portion of the block bounded by 37th Avenue on the north, 39th Avenue on the South, Union Street on the east and 138th Street on west, Block 4978, Lot 25, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a special permit, which permitted the construction of four buildings contrary to the height restrictions applicable to buildings within a certain distance of LaGuardia Airport, per ZR § 61-21; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and

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Commissioner Montanez; and

WHEREAS, the subject site is located on the majority of the block bounded by 138th Street to the west, 37th Avenue to the north, 39th Avenue to the south and Union Street to the east, within a C4-3 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 27, 2010, when, under the subject calendar number, the Board granted a special permit authorizing, within a C4-3 zoning district, the construction of four buildings in a mixed residential, commercial, and community facility development, which exceed the maximum height limits around airports, contrary to ZR § 61-21; and

WHEREAS, pursuant to ZR § 73-70, construction was to be substantially completed by July 27, 2014; however, the applicant represents that construction has not yet commenced and will not be completed by that date; and

WHEREAS, the applicant states that after receiving the special permit, ULURP approvals, and rezoning in 2010, the developer encountered difficulties obtaining financing for the project; and

WHEREAS, the applicant states that it has secured the necessary financing to complete the project; and

WHEREAS, accordingly, the applicant now seeks an extension of time to substantially complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions, as set forth below

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 27, 2010, so that as amended this portion of the resolution reads: “to grant an extension of time to complete construction to July 27, 2018; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction will be completed by July 27, 2018;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 410186427)

Adopted by the Board of Standards and Appeals, June 17, 2014.

49-11-BZ

APPLICANT – Warshaw Burstein, LLP, for A&G Real Estate, LLC, owner; Barry's Boot camp NYC, LLC, lessee. SUBJECT – Application February 21, 2014 – Amendment of a previously approved Special Permit (§73-36) to allow the extension of physical culture establishment. C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, north side

of West 20th Street between Sixth Avenue and Seventh Avenue, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previously-granted special permit for a physical culture establishment (“PCE”) to legalize the enlargement of the PCE; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, and then to decision on June 17, 2014; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 20th Street, between Sixth Avenue and Seventh Avenue, within a C6-3A zoning district; and

WHEREAS, the site is occupied by a six-story commercial building; and

WHEREAS, the PCE occupies 5,279 sq. ft. of floor area on the ground floor and 4,266 sq. ft. of floor space in the cellar, for a total PCE size of 9,545 sq. ft.; and

WHEREAS, the PCE is operated as Barry’s Bootcamp; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 12, 2011 when, under the subject calendar number, the Board granted a special permit operation of the PCE in the subject building for a term of ten years, to expire on July 12, 2021; under the original grant, the PCE was permitted to occupy 3,561 sq. ft. of floor area on the ground floor and 2,873 sq. ft. of floor space in the cellar for a total PCE size of 6,434 sq. ft.; and

WHEREAS, the applicant now seeks an amendment to permit legalize the enlargement of the PCE into other portions of the ground floor and cellar of the building; specifically, the proposal would increase the total permitted size of the PCE from 6,434 sq. ft. to 9,545 sq. ft.; and

WHEREAS, the Board referred the application to the Fire Department and by letter dated May 15, 2014, the Fire Department offered no objection to the expansion of the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested amendments to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens*, and *amends* the resolution to permit the noted modifications; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received February 21, 2014’-(4) sheets; and *on further*

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condition:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT 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.”

(DOB Application No. 120612774)

Adopted by the Board of Standards and Appeals, June 17, 2014.

611-52-BZ

APPLICANT – Gerald J. Caliendo, for John Blumenfield - HL Dalis, Inc., owner.

SUBJECT – Application October 15, 2013 – Extension of Term (§11-411) of a previously approved variance permitting a one story warehouse building, which expired on May 5, 2013. R5 zoning district.

PREMISES AFFECTED – 35-35 24th Street, east side of 24th Street, 130.63 feet south from the intersection of 35th Avenue and 24th Street, Block 338, Lot 8, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Baron Properties III, Inc., owner.

SUBJECT – Application October 1, 2013 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (*Genesis Auto Town*) which expired on January 23, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2001; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, northwest corner of intersection of Northern Boulevard and 201st Street, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

997-84-BZ

APPLICANT – Sheldon Lobel, P.C., for 222 Union Associates, owner.

SUBJECT – Application January 23, 2014 – Amendment (§11-413) to a previous variance for a public parking garage. The amendment would convert the building to mixed use, with retail (UG 6) on first floor and cellar, and residential (UG 2) on the second through sixth floors. R6A & C1-1/R6A zoning district.

PREMISES AFFECTED – 798-804 Union Street, 6th Avenue and 7th Avenue, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for continued hearing.

775-85-BZ

APPLICANT – Sheldon Lobel, P.C., for Ivy Cross Island Plaza, owner.

SUBJECT – Application December 18, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of a three-story office building, contrary to permitted height and use regulations, which expired on February 24, 2012; Amendment to modify the parking layout, eliminate buffering and eliminate the term; Waiver of the Rules. C1-3/R2 and R2 zoning district.

PREMISES AFFECTED – 133-33 Brookville Boulevard, triangular lot with frontages on Brookville Boulevard, Merrick Boulevard, 133rd Avenue and 243rd Street, Block 12980, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

24-03-BZ

APPLICANT – Warshaw Burstein, LLP, for Cumberland Farms, Ink, owner.

SUBJECT – Application February 26, 2014 – Extension of Term (§11-411) of a previously approved variance which permitted a gasoline service station and an automobile repair facility (UG 16) which expired on July 15, 2013; Waiver of the Rules. C1-2/R2A zoning district.

PREMISES AFFECTED – 178-02 Union turnpike, intersection formed by Union Turnpike and Surrey Parcel, Block 7227, Lot 29, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

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245-03-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for Allied Enterprises NY LLC, owner; McDonald's Real Estate Company, lessee.

SUBJECT – Application December 26, 2013 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (*McDonald's*), which expired on December 12, 2013. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

271-07-BZ

APPLICANT – Eric Palatnik, P.C., for 217 W.23rd Street LLC., owner; Crunch LLC, lessee.

SUBJECT – Application December 23, 2013 – Amendment of a special permit (§73-36) and variance (§72-21) authorizing a physical culture establishment (*Crunch*) by allowing a change in operator, Extension of Term, Extension of Time to obtain a Certificate of Occupancy, and Waiver of the Rules. C2-7A/R8A zoning district.

PREMISES AFFECTED – 215 West 23rd Street, north side of West 23rd Street, 118.75 ft. west of intersection of West 23rd Street and 7th Avenue, Block 773, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

51-13-A

APPLICANT – Carl A. Sulfaro, for Woodward Avenue Realty, Inc., owner.

SUBJECT – Application January 29, 2013 – Proposed construction of a one-story warehouse located partially within the bed of mapped street (*Metropolitan Avenue*), contrary to General City Law Section 35. M3-1 zoning district.

PREMISES AFFECTED – 10 Woodward Avenue, southwest corner of Metropolitan Avenue and Woodward Avenue, Block 3393, Lot 49, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 18, 2013 acting on DOB Application No. 420790424, reads in pertinent part:

A portion of the building site and proposed building lies in the bed of a mapped street, contrary to GCL 35; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, this is an application to allow the construction of one-story warehouse, which will be partially located in the bed of Metropolitan Avenue, a mapped street; and

WHEREAS, the subject site lies at the southwest corner of the intersection of Metropolitan Avenue and Woodward Avenue, within an M3-1 zoning district; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of the application, citing traffic safety concerns; and

WHEREAS, by letter dated April 16, 2013, the Fire Department states that it has reviewed the proposal and offers no objections; and

WHEREAS, by letter dated April 22, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there is an existing 36-inch diameter combined sewer, a 12-inch diameter and an eight-inch diameter City water main in the bed of Metropolitan Avenue fronting the above referenced location; and (2) Amended Drainage Plan No. 21(30), dated May 22, 1925, for the above-referenced location, shows a ten-inch diameter sanitary sewer, a 36-inch diameter storm sewer and a ten-inch diameter force main in

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Metropolitan Avenue west of Woodward Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the distances from the lot line of Lot 49 to the 36-inch diameter combined sewer, and the 12-inch diameter and eight-inch diameter City water main in the bed of Metropolitan Avenue; and

WHEREAS, in response to DEP's request, by letter dated May 6, 2013, the applicant submitted a revised architectural survey, which shows a 100-foot mapped-width for Metropolitan Avenue and a 34-foot widening portion of Metropolitan Avenue southwest of Woodward Avenue; the remaining 66-foot traveled portion of the street will be available for the reconstruction and/or maintenance of the existing and future sewers, and the existing water mains; and

WHEREAS, based on the above DEP has no further objections; and

WHEREAS, by correspondence dated September 6, 2013, the Department of Transportation ("DOT") has reviewed the above project and has no objections; and

WHEREAS, DOT notes that according to the Queens Borough President's Topographical Bureau: (1) Metropolitan Avenue between Onderdonk Avenue and Flushing Avenue is mapped to a 100-foot width on the Final City Map; and (2) the City has title to the northerly 66 feet by a deed recorded on June 2, 1873; and

WHEREAS, DOT also notes that the improvement of Metropolitan Avenue fronting the site is not presently included in DOT's Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the decision of the DOB, dated January 8, 2013, acting on DOB Application No. 420790424 by the power vested in it by Section 35 of the General City Law, limited to the decision noted above, *on condition* that construction will substantially conform to the drawing filed with the application marked "Received June 4, 2014"--(1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on June 17, 2014.

59-13-A

APPLICANT – Carl A. Sulfaro, Esq., for Onofrio and Josephine Papia, owners.

SUBJECT – Application February 5, 2013 – Proposed construction of a new one family residence located in the bed of a mapped street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 11-30 143rd Place, west side of 143rd Place, 258.57' south of 11th Avenue, Block 4434, Lot 147, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 18, 2013, acting on DOB Application No. 420619539, reads in pertinent part:

Proposed construction of a new building in the bed of a mapped street is contrary to the General City Law Section 35 and is hereby denied; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, this is an application to allow the construction of one-story, one-family dwelling that will be partially located in the bed of 13th Avenue, a mapped street; and

WHEREAS, the subject site lies at the west side of 143rd Place approximately 259 feet south of 11th Avenue, within an R1-2 zoning district; and

WHEREAS, by letter dated April 13, 2013, the Fire Department states that it has reviewed the proposal and offers no objection, provided that the building is fully-sprinklered; and

WHEREAS, in response, the applicant submitted a revised site plan, dated May 30, 2014, which indicates that the building will be fully-sprinklered; and

WHEREAS, by letter dated April 16, 2013, the Department of Environmental Protection ("DEP") states that: (1) there is an existing 12-inch diameter private sanitary sewer, an eight-inch diameter City water main in 143rd Place fronting the above referenced property; and (2) Amended Drainage Plan No. 37A(5), 37C(1), and 37FS(2), Sheet 4 of 9, 1942, for the above-referenced location, calls for a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer to be installed in 13th Avenue, between 143rd Place and 142nd Street; and

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WHEREAS, DEP states that the applicant has submitted a survey for the above location which shows: (1) 60-foot width of 13th Avenue between 143rd Place and 142nd Street; and (2) shows that the property is located in the bed of mapped 13th Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing: (1) the distances from the westerly lot line of the site to the terminal manhole of the ten-inch diameter private sanitary sewer and to the end cap of the eight-inch diameter City water main in the bed of 13th Avenue; (2) show a 32-foot wide sewer corridor in the bed of 13th Avenue along the site for the installation, maintenance and/or reconstruction of the future ten-inch diameter sanitary sewer and the 12-inch diameter; alternatively, the applicant may seek to amend the drainage plan; and

WHEREAS, in response to DEP's request, by letter dated March 19, 2014, the applicant has submitted a revised architectural survey; the revised survey shows a distance of 25 feet from the terminal manhole of the ten-inch diameter private sanitary sewer and a distance of one foot from the hydrant on the eight-inch diameter City water main to the westerly lot line of the site; and

WHEREAS, DEP states that based on the Topographical Bureau Map No. 3711, dated September 30, 1953, the Drainage Review Section determined that Lots 27 and 151 would benefit from the existing ten-inch diameter sanitary sewer and will discharge storm flow to the future storm sewer in 13th Avenue; and

WHEREAS, based on the above DEP has no further objections; and

WHEREAS, by correspondence dated September 6, 2013, the Department of Transportation ("DOT") has reviewed the above project and has no objection; and

WHEREAS, the DOT notes that according to the Queens Borough President's Topographical Bureau: (1) 13th Avenue between 142nd Street and 13th Place is mapped to a 60-foot width on the Final City Map; and (2) the City has no title to the mapped street; and

WHEREAS, DOT also notes that the improvement of 13th Avenue in the location of the site is not presently included in DOT's Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the decision of DOB, dated January 18, 2013, acting on DOB Application No. 420619539 by the power vested in it by Section 35 of the General City Law, limited to the decision noted above, *on condition* that construction will substantially conform to the drawing filed with the application marked "Received May 30, 2014" – (1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

THAT this approval is limited to the relief granted by

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on June 17, 2014.

166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings' interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings’ determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for decision, hearing closed.

89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner.

SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize a hotel (*Affinia Gardens Hotel*) under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for postponed hearing.

103-14-A

APPLICANT – Akerman LLP, for 55 Eckford Lots LLC, owner.

SUBJECT – Application May 9, 2014 – Appeal seeking a determination that the owner has obtained a common law vested right to complete construction under the prior R6/M1-1 zoning district regulations. M1-2/R6B zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford bounded by Driggs Avenue to its north and Engert Avenue to its south, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

54-12-BZ

CEQR #12-BSA-087Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 8, 2012, acting on DOB Application No. 420316535, reads in pertinent part:

Proposed community facility with dwelling above located in an R5 zoning district does not meet the following bulk regulations:

1. Exceeds the minimum allowed lot coverage for the residential portion of the building, per ZR 23-141;
2. Is not allowed to be built on an existing small lot that does not meet the minimum lot width, per ZR 23-32 and 23-33;
3. Does not meet the required front yard, per ZR 23-45 and 24-34;
4. Does not meet the required side yards, per ZR 23-46 and 24-35;
5. Does not meet the required side setback, per ZR 24-55; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located within an R5 zoning district, the construction of a two-story mixed residential (Use Group 2) and community facility building (Use Group 4) that does not comply with the bulk regulations for lot coverage, minimum lot width, front yard, side yards, and side setback, contrary to ZR §§ 23-141, 23-32, 23-33, 23-45, 23-46, 24-34, 24-35, and 24-55; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013, October 22, 2013, March 11, 2014, and May 20, 2014,

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and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommended approval of the original version of this application, provided that (1) the community facility operates within standard business hours and (2) the facility does not offer open MRI, PET scan, or CT scan procedures; and

WHEREAS, the subject site spans the east side of 102nd Street between 65th Road and 66th Avenue, within an R5 zoning district, within a predominantly built-up area; and

WHEREAS, the site has approximately 130 feet of frontage along 102nd Street, approximately 22 feet of frontage along 65th Road, approximately 18 feet of frontage along 66th Avenue, and 2,573 sq. ft. of lot area; and

WHEREAS, the applicant submitted excerpts of Sanborn maps from various years between 1914 and 1994, which indicate that the site has been a lot of record in its current size and configuration for at least 100 years; and

WHEREAS, the site is occupied by two buildings: (1) a two-story, semi-detached, single-family home (Use Group 2) with 1,446 sq. ft. of floor area (0.56 FAR) on the northern portion of the site; and (2) a one-story, detached medical office (Use Group 4) with 610 sq. ft. of floor area (0.24 FAR) on the southern portion of the lot; thus, the site has a total existing floor area of 2,056 sq. ft. (0.80 FAR); and

WHEREAS, the applicant notes that both the home and the medical office were completed on or about July 10, 1958 and that the owner of the home constructed the medical office for his private practice; and

WHEREAS, the applicant states that the home is occupied but the medical office is vacant and has been since the current owner took possession of the site; and

WHEREAS, the applicant originally proposed to demolish the medical office building and construct a four-story mixed residential (Use Group 2) and ambulatory diagnostic or treatment health care facility (Use Group 4) building with 3,731 sq. ft. of floor area (1.45 FAR) (2,799 sq. ft. of residential floor area and 932 sq. ft. of community facility floor area) and wall and building heights of 35'-0"; the original proposal included community facility on the first story and one dwelling on each of the second through fourth stories; this proposal required waivers for lot coverage, minimum lot width, front, rear, and side yards, and side setback; and

WHEREAS, through the hearing process, the proposal was scaled down significantly; the applicant now proposes to demolish the medical office building and construct a two-story mixed residential (Use Group 2) and ambulatory diagnostic or treatment health care facility (Use Group 4) building with 1,866 sq. ft. of floor area (0.73 FAR) (933 sq. ft. of residential floor area and 933 sq. ft. of community facility floor area), a wall height of 22'-0" and a building height of 28'-0", and complying rear yard depth of 27'-5"; the revised proposal has a community facility on the first story and one dwelling unit on the second story and requires waivers for lot coverage,

minimum lot width, front and side yards, and side setback; the revised proposal will increase the total floor area on the site from 2,056 sq. ft. (0.80 FAR) to 3,321 sq. ft. (1.28 FAR), which is well within the maximum permitted floor area for the site (5,177 sq. ft. (2.0 FAR)); and

WHEREAS, as to the waivers, the applicant states that the proposal includes 64 percent lot coverage (a maximum lot coverage of 60 percent is permitted for a community facility building), one front yard with a depth of 15'-0" (the requirement is two front yards with minimum depths of 10'-0" and 18'-0"), no side yard (the requirement is one side yard with a minimum width of 8'-0"), and no side setback (a side setback with a minimum width of 8'-0" is required for a community facility building); and

WHEREAS, in addition, the applicant states that because the existing lot width is 17'-6" and the minimum lot width in the subject R5 district is 18'-0", any increase in the existing floor area on the lot requires a minimum lot width waiver; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the zoning lot, which, in accordance with ZR § 72-21(a), create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the history of community facility use at the site and obsolescence of the building at the site for such use; (2) the site's three frontages; and (3) the relative underdevelopment of the site and inability to enlarge; and

WHEREAS, the applicant states that, unlike nearby sites, the subject site is occupied by a small, functionally-obsolete community building that creates practical difficulties in redeveloping the site; and

WHEREAS, in particular, the applicant states that the building, which is more than 55 years old, has only 610 sq. ft. of rentable floor area and no cellar or basement; as such, the space is too small to meet even the minimum requirements of a modern medical office, which include a waiting room, a reception area, an examination room, record storage areas, a restroom, and some private office space for medical professionals; and

WHEREAS, the applicant represents that the space has no market potential in its current condition and configuration and the owner has made numerous attempts to secure a tenant over the years, without success; and

WHEREAS, the applicant also asserts that the site's three frontages along 102nd Street, 65th Road and 66th Avenue (which is a historic condition) create a unique burden that makes as-of-right development of the site infeasible; and

WHEREAS, the applicant states that because the site has three frontages, it must provide three front yards with minimum depths of 10'-0" along the portion of its perimeter fronting on a street (a linear distance of approximately 170'-0"); as such, the front yard requirements alone reduce the developable area of the site by approximately 1,700 sq. ft.; the rear and side yards and lot coverage requirements further reduce the portion of the site where development may occur as-of-right; and

MINUTES

WHEREAS, finally, the applicant states that the site has history of underdevelopment with little potential to develop as-of-right; and

WHEREAS, as noted above, the applicant states that the site's 2,056 sq. ft. of floor area (0.80 FAR) was developed in 1958 represents less than half of the maximum permitted FAR for the site (1.65 FAR); and

WHEREAS, the applicant states that despite its underdevelopment, its location on a corner and the applicable yard and lot coverage requirements make further development—or even complete redevelopment—impractical; and

WHEREAS, specifically, the applicant states that an as-of-right community facility building on the site would have only 203 sq. ft. of floor area, which, is not enough to accommodate even the smallest community facility use (the applicant notes that typical medical offices range from 1,000 sq. ft. to 1,200 sq. ft., including storage space); thus, an as-of-right office at the site would be one-fifth the size of a typical office; and

WHEREAS, the applicant also analyzed the technical feasibility of enlarging the site's single-family home, in order to realize a greater portion of the site's development potential (the home has 1,446 sq. ft. of floor area (0.56 FAR); a maximum of 4,246 sq. ft. (1.65 FAR) is permitted because the site is within a predominantly built-up area); however, the applicant submitted an analysis, which reflects that yard requirements prevent *any* enlargement of the existing home; in contrast, other homes on the subject block with similar FARs on similarly-sized sites but without three frontages are able to enlarge both vertically and horizontally by an average of 1,310 sq. ft.; and

WHEREAS, thus, the applicant states that the site is significantly disadvantaged by the site's obsolescent building, its three frontages, and its historic underdevelopment; and

WHEREAS, based upon the above, the Board finds that, in accordance with ZR § 72-21(a), the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in compliance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) the status quo; (2) the construction of a new as-of-right community facility building; (2) a lesser scenario involving the enlargement of the existing community facility building with front and side yard waivers only; and (4) the proposal; and

WHEREAS, thus, the applicant concludes that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board questioned the value of the site in comparison to nearby sites; and

WHEREAS, in response, the applicant amended its analysis and reduced the site value; and

WHEREAS, based upon its review of the applicant's

submissions, the Board concludes that because of the site's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the neighborhood is predominantly occupied by residential and community facility uses, with diverse mix of rowhouses, high-rise multiple dwellings, medical facilities, and schools; and

WHEREAS, the applicant states that the site has been occupied by a medical facility for more than 55 years, that Use Group 4 is permitted as-of-right in the subject zoning district; and

WHEREAS, as to adjacent properties, the applicant states that two-story residential building are located north, east, and west of the site; south of the site across the 66th Avenue is the ten-story Forest Hills Hospital and southwest of the site, where 66th Avenue terminates at 102nd Street, and there is a seven-story multiple dwelling; and

WHEREAS, the applicant states that the proposed enlargement will have no discernable impact on any adjacent use; and

WHEREAS, the applicant states that although there are taller buildings in the vicinity of the site, there is a strong two-story context directly north, east and west of the site and the proposal is in keeping with this context; and

WHEREAS, the applicant also states that the proposed yard waivers actually allow the building to have its minimum impact on adjacent uses, by allowing the building to be constructed at the southwesternmost portion of the site (the exclusively residential uses on the subject block are north and east of the proposed building); and

WHEREAS, as to lot minimum lot width, the applicant states that the proposed width of 17'-6" is deficient by only 0'-6" and is an existing condition, which does not impact adjacent uses; and

WHEREAS, as to lot coverage, the applicant states that the proposed 64-percent lot coverage is both modest (the maximum permitted is 60 percent) and necessary to allow construction of a building with viable residential and community facility floorplates; and

WHEREAS, finally, as with lot coverage and yards, the side setback waiver is necessary to construct a building that is both marketable and responsive to the low-rise context of the block; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant asserts and the Board agrees that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to

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the site's unique physical conditions; and

WHEREAS, the applicant states that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board agrees that the proposal is the minimum variance necessary, per ZR § 72-21(e), and it notes that the proposal has been reduced by two stories and 1,865 sq. ft. of floor area since its original iteration; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 12-BSA-087Q, dated March 7, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site located within an R5 zoning district, the construction of a two-story mixed residential (Use Group 2) and community facility building (Use Group 4) that does not comply with the bulk regulations for lot coverage, minimum lot width, front yard, side yards, and side setback, contrary to ZR §§ 23-141, 23-32, 23-33, 23-45, 23-46, 24-34, 24-35, and 24-55; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 11, 2014" – five (5) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: two stories; 1,866 sq. ft. of floor area (0.73 FAR) (933 sq. ft. of residential floor area and 933 sq. ft. of community facility floor area), a maximum wall height of 22'-0"; a maximum building height of 28'-0"; and a minimum rear yard depth of 27'-5"; as indicated on the BSA-approved plans;

THAT the zoning lot will have a maximum floor area of

3,321 sq. ft. (1.28 FAR);

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

263-12-BZ CEQR #13-BSA-029X

APPLICANT – Sheldon Lobel, P.C., for Luke Company LLC, owner.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 232 & 222 City Island Avenue, site bounded by Schofield Street and City Island Avenue, Block 5641, Lots 10, 296, Borough of Bronx.

COMMUNITY BOARD #10 & 13BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 21, 2013, acting on DOB Application No. 220206783, reads, in pertinent part:

Residential use is not permitted in an M1-1 zoning district, per ZR Section 42-00

Residential use does not have the required front yard along the zoning district boundary, as required by ZR Section 43-304; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, within the Special City Island District, the construction of a three-story residential building with age-restricted dwelling units (Use Group 2) with a front yard depth of 10'-0", contrary to ZR §§ 42-00 and 43-304; and

WHEREAS, a public hearing was held on this application on June 11, 2013, after due notice by publication in the *City Record*, with continued hearings on October 29, 2013, and February 25, 2014. On May 20, 2014, the case was reopened and closed, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site

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and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the Board notes that the application has been significantly altered through the hearing process; the original application included four stories, 132,271 sq. ft. of floor area (2.4 FAR), 65 percent lot coverage, 214 assisted-living dwelling units, 102 parking spaces, no front yards, a rear yard depth of 20'-0", and a variance of Building Code Section BC G304 (which, among other things, requires that residential buildings be elevated above the design flood elevation) under BSA Cal. No. 264-12-A (the "Original Application"); the amended proposal includes three stories, 33,310 sq. ft. of floor area (0.6 FAR), 22-percent lot coverage, 45 age-restricted (persons 55 years of age or older) dwelling units, 48 parking spaces, two front yards with depths of 10'-0", a rear yard depth of 30'-0", and construction in accordance with Building Code Section BC G304 (the "Amended Application"); and

WHEREAS, Community Board 10, Bronx, recommended disapproval of the Original Application and recommends disapproval of the Amended Application, citing concerns regarding: (1) the placement of housing on a site within a manufacturing district and a flood plain; (2) the amount of open space provided on the lot; and (3) the absence of "green" initiatives and flood-prevention measures at the building and site; and

WHEREAS, State Senator Jeffrey Klein and City Councilmember James Vacca recommended disapproval of the Original Application; and

WHEREAS, the City Island Chamber of Commerce recommends approval of the Amended Application; and

WHEREAS, certain members of the surrounding community submitted testimony in support of both Original and Amended Applications; and

WHEREAS, certain members of the surrounding community and the City Island Civic Associated (through counsel) submitted testimony in opposition to the Original Application (the "Opposition"); and

WHEREAS, the Opposition identified the following reasons for its objection to the Original Application: (1) the applicant lacks the legal capacity to develop or operate a residence for the elderly; (2) the proposed building is grossly incompatible with the surrounding community and puts building and neighborhood residents at risk; (3) the applicant fails to make the required findings to justify the variances it seeks under the Zoning Resolution and the Building Code; and (4) the application does not reflect the January 2012 Federal Emergency Management Agency ("FEMA") Advisory Flood Insurance Rate Map changes, which increased the minimum elevation requirement of the building's lowest floor to an adjusted height of 13'-6"; and

WHEREAS, a member of the City Island Civic Association states that the group does not oppose the Amended Application; however, it requests the following modifications: (1) the inclusion of a permeable paved surface; and (2) the inclusion of a "green" roof; and

WHEREAS, in response, the applicant states that it is unable to utilize a permeable paved surface because it must cap the soil prevent the risk of human exposure to certain contaminants that may be present in the soil; the applicant notes that the drainage for the site will be in accordance with the applicable provisions of the building code; and

WHEREAS, as to the green roof, the applicant states that 34 percent of the roof is dedicated as a "green" roof; and

WHEREAS, this application is brought on behalf of the Italian Hospital Society, a not-for-profit organization, which the applicant states was established in 1937 in conjunction with the founding of the Italian Hospital of New York on West 110th Street; and

WHEREAS, the subject site is an irregularly-shaped parcel located on the southeast corner of the intersection of City Island Avenue and Schofield Street, within an M1-1 zoning district, within the Special City Island District; and

WHEREAS, the site has approximately 191 feet of frontage along Schofield Street, approximately 237 feet of frontage along City Island Avenue, and 55,529 sq. ft. of lot area; and

WHEREAS, the site is currently used as a contractor's yard (Use Group 17); and

WHEREAS, as noted above, the applicant seeks to construct a three-story building with three stories 33,310 sq. ft. of floor area (0.6 FAR), 22 percent lot coverage, 45 age-restricted dwelling units, 48 parking spaces, two front yards with depths of 10'-0", and a rear yard depth of 30'-0"; the applicant notes that although the residence will be age-restricted, no assisted-living services will be provided; and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-1 zoning district, the applicant requests a use variance; and

WHEREAS, in addition, because Schofield Street is a narrow street and its center line is a district boundary between the subject M1-1 zoning district and an R3A zoning district, a front yard depth of 20'-0" is required along the Schofield Street frontage, per ZR § 43-304; however, the applicant seeks to provide a front yard depth of 10'-0" along Schofield Street, and, as such, a variance of ZR § 43-304 is requested; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's contaminated soil; (2) its high water table; and (3) its location within a flood plain; and

WHEREAS, the applicant states that the site suffers from high levels of contamination, including the presence of a layer of coal ash, slag and petroleum, volatile organic compounds, semi-volatile organic compounds, and metals; as such, the site will require significant remediation, including soil removal, disposal, and replacement of soils; further, the foundation will require special ventilation to allow trapped vapors to be safely exhausted and the underlying soil will be sealed with a concrete cap; and

WHEREAS, the applicant also notes that the site has been admitted into the New York State Department of

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Environmental Conservation Brownfields Cleanup Program, which will help to defray some but not all of the costs associated with redevelopment of the site; and

WHEREAS, the applicant states that ground water at the site fluctuates between five and ten feet below grade, which prevents the use of sub-grade spaces for administrative offices and common dining and recreational areas; and

WHEREAS, in addition, the applicant represents that the high water table will require dewatering and shoring of excavation walls during the construction of the foundation, at significant costs; and

WHEREAS, lastly, the applicant states that the site's location within a flood plain results in additional premium construction costs; and

WHEREAS, specifically, the applicant states that the site is within Zones AE and X of FEMA Advisory Flood Insurance Rate Map; as such, the lowest story of the building must be elevated above the design flood elevation, dry flood-proofing materials must be utilized at the cellar and first story, and utilities and equipment must be located at or above the design flood elevation or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, as to the uniqueness of the site's physical conditions, the applicant states that while many sites on City Island are either contaminated, have a high water table, or are within a flood plain, no other site of remotely comparable size has all three conditions; accordingly, the applicant asserts that the site is unlike any other site on City Island; and

WHEREAS, thus, the applicant asserts that the site's unique combination of physical conditions—and their attendant premium construction costs—make a conforming development at the site impractical; and

WHEREAS, in particular, the applicant states that an as-of-right three-story office building with 34,800 sq. ft. of floor area (0.63 FAR) and 116 surface parking spaces does not produce sufficient returns to offset the above-noted premium construction costs; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in accordance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of: (1) an as-of-right office building with (0.63 FAR); (2) an as-of-right office building with (1.0 FAR); (3) a lesser variance multiple dwelling with 0.5 FAR; (4) a lesser variance 0.5 FAR residential scenario with 21 single-family dwellings; and (5) the proposal; and

WHEREAS, the applicant concluded that only the proposal results in a positive rate of return, making it economically viable; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance and compliance with applicable zoning requirements will provide a reasonable return, in accordance with ZR § 72-21(b); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a predominance of two-story residential buildings, except along City Island, which, to the north, includes local retail and office uses, and, to the south, P.S. 175, a portion of Ambrosini Field along City Island Avenue, and a yacht club; and

WHEREAS, as to immediately adjacent uses, the applicant states that there are residences or mixed residential and commercial buildings directly north and west of the site, an unmapped street (Centre Street) and Ambrosini Field directly south of the site, and a Verizon telephone exchange building directly east of the site; and

WHEREAS, thus, the applicant contends that the proposed residential use is entirely consistent with surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant states that while the proposed 0.6 FAR is higher than the 0.5 FAR permitted in the nearby R3A district, it is well within the 1.0 FAR permitted for a conforming use at the site; and

WHEREAS, as noted above, through the hearing process and in response to concerns articulated by the community and by the Board, the applicant significantly scaled down the size and changed the nature of the project, from a four-story, assisted-living facility with 132,271 sq. ft. of floor area (2.4 FAR) and 214 dwelling units to a three-story, age-restricted apartment building with 33,310 sq. ft. of floor area (0.6 FAR) and 45 dwelling units; and

WHEREAS, additionally, the applicant notes that the proposed height complies with height regulations of the Special City Island District (ZR § 112-106) and the proposed density (45 dwelling units) is less than would be permitted if the site were subject to the density regulations of an R3A zoning district (47 dwelling units); and

WHEREAS, as to the requested front yard waiver, the applicant states that providing a front yard depth of 20'-0" along Schofield Street for the proposed residential building is impractical and unnecessary, and would result in a loss of dwelling units that would make the proposal infeasible; and

WHEREAS, the applicant asserts that the neighborhood context, parking and open space requirements of an R3A zoning district, and programmatic needs of the Italian Hospital Society in creating an appropriate age-restricted living environment with easily accessible parking and outdoor recreation space must be considered in determining the

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appropriate depth of the front yard along Schofield Street; and

WHEREAS, further, the applicant states that providing a front yard depth of 20'-0" along Schofield Street does not further the purposes of the ZR § 43-304, because the section was clearly intended to provide an added buffer between residential uses and manufacturing uses and the proposed building is residential within the manufacturing district; thus, no buffer is necessary and a front yard depth of 10'-0" (the requirement in the adjacent R3A zoning district) is appropriate; and

WHEREAS, thus, the applicant states that the proposed bulk is consistent with the built character of the surrounding neighborhood; and

WHEREAS, the Board agrees that the character of the area is residential, and finds that, pursuant to ZR § 72-21(c), this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board also finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's soil contamination, high water table, location within a flood plain, as well as the limited economic potential of conforming uses on the lot; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA029X, dated August 31, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the site has been submitted for entry into the New York State Brownfield Cleanup Program ("BCP") administered by the New York State Department of Environmental Conservation ("DEC"); and

WHEREAS, based on the level of site contamination and the applicant's proposal to construct subject to BCP approval, the Department of Environmental Protection ("DEP") recommends that an E designation for hazardous materials be placed on the site as part of the approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M1-1 zoning district, within the Special City Island District, the construction of a three-story residential building with age-restricted dwelling units (Use Group 2) with a front yard depth of 10'-0", contrary to ZR §§ 42-00 and 43-304, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 13, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: three stories, a maximum floor area of 33,310 sq. ft. (0.6 FAR), a maximum lot coverage of 22 percent, a maximum of 45 age-restricted dwelling units, 48 parking spaces, two front yards with minimum depths of 10'-0", and a minimum rear yard depth of 30'-0";

THAT the occupancy of the building will be limited to persons 55 years of age or older;

THAT landscaping will be in accordance with the BSA-approved drawings;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT, an E designation (E-347) is placed on the subject property to ensure proper hazardous materials remediation;

THAT, prior to the issuance by DOB of permits that involve soil disturbance, the applicant shall obtain from OER a Notice to Proceed, which shall be based on DEC's letter of acceptance into the Brownfield Cleanup Program;

THAT, prior to the issuance by DOB of a certificate of occupancy, the applicant shall obtain from OER a Notice of Satisfaction, which shall be based on DEC's letter of satisfaction regarding completion of the Brownfield Cleanup Program;

THAT, should the applicant not obtain an approval from DEC for completion of the BCP, the applicant must obtain approval from OER for a hazardous materials remediation plan and construction health related safety plan prior to the issuance of a Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

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THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

347-12-BZ

CEQR #13-BSA-072Q

APPLICANT – Law Office of Vincent L. Petraro, PLLC, Mitchell S. Ross, Esq., for X & Y Development Group, LLC., owner.

SUBJECT – Application December 26, 2012 – Variance (§72-21) to permit a transient hotel and community facility use (*North Queens Medical Center*), contrary to use regulations (§22-10), and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport. R7-1 (C1-2) zoning district.

PREMISES AFFECTED – 42-31 Union Street, east side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11, 14, 15, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 26, 2012, acting on DOB Application No. 420213219, reads in pertinent part:

1. Proposed building height exceeds the maximum height limitation by the flight obstruction map of LaGuardia Airport, per ZR 61-20;
2. Proposed transient hotel is not within uses permitted as-of-right in R7-1 zoning district, per ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, 73-66, and 73-03, to permit, on a site partially within an R7-1 (C1-2) zoning district and partially within an R7-1 zoning district, the construction of a 18-story mixed community facility and commercial building to be occupied as a transient hotel (Use Group 5) with 180 rooms and an ambulatory diagnostic or treatment health care facility (Use Group 4), contrary to the use and height regulations set forth in ZR §§ 22-10 and 61-20; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 13, 2014, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of the application, subject to the following conditions: (1) the parking will be attended and open to the public at daily rates; (2) a shuttle will be provided to Main Street in Flushing and to LaGuardia Airport; (3) curbside drop off will be prohibited by the hotel and by the health care facility; (4) the health care facility will operate during regular business hours; (5) there will be no catering or restaurant connected to the hotel; (6) the hotel will not obtain a liquor license; (7) the hotel and the health care facility will maintain orderly pickup and delivery of materials; (8) a community room will be provide for community board and civic association organization with free parking upon request; (9) the building will be LEED-certified “Gold” and have a “green” roof; and (10) the hotel will have 161 rooms; and

WHEREAS, certain members of the surrounding community submitted testimony in opposition to application (the “Opposition”), citing the following concerns: (1) the excessive height of the building; (2) the inconsistency of transient use with the nearby residential uses; (3) the ability of the sewer system to accommodate a 180-room hotel; (4) the construction practices and after-hours work occurring at the site at present; and (5) increased traffic around the site during construction and after the hotel and medical facility begin operation; and

WHEREAS, the subject site is an irregularly-shaped through lot that comprises Tax Lots 11, 14, and 15 (Tentative Lot 15), partially within an R7-1 (C1-2) zoning district and partially within an R7-1 zoning district; and

WHEREAS, the site has approximately 126 feet of frontage along Union Street, approximately seven feet of frontage along Bowne Street, and 32,532 sq. ft. of lot area; and

WHEREAS, in addition, the site is within a flight obstruction area for LaGuardia Airport, which limits the height of any building at the site to 155’-0”;

WHEREAS, the applicant represents that, at present, the site is a construction site for an as-of-right residential development; and

WHEREAS, the applicant proposes to construct an 18-story mixed community facility (Use Group 4) and commercial (Use Group 5) building; the proposed bulk parameters are as follows: 156,154 sq. ft. of floor area (4.8 FAR)(44,895 sq. ft. of community facility floor area (1.38 FAR) and 111,259 sq. ft. of commercial floor area (3.42 FAR)); total building height of 229’-6” (243’-0”, including bulkheads); 31-percent lot coverage; a rear yard depth of 60’-0”;

WHEREAS, because Use Group 5 is not permitted as-of-right in the R7-1 portion of the site, the applicant seeks a use variance; and

WHEREAS, because, as noted above, the site is within a flight obstruction area, and the proposed height (243’-0”) exceeds 155’-0”, the applicant seeks a special permit

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pursuant ZR § 73-66; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the site's substandard soil conditions; and (2) its unusual shape; and

WHEREAS, the applicant asserts that the site's soil is substandard, resulting in premium construction costs; and

WHEREAS, specifically, the applicant states that, based the report of its geotechnical consultant, the soil at the site is particularly unstable, loose, and uneven; as such, deep excavation (to a depth of 50'-0" below grade) and piling at closer intervals are required in order to protect adjacent sites during foundation and sub-grade construction work; in addition, the site contains a significant number of intrusions (boulders), which further increase the costs owing to the unstable soil; and

WHEREAS, at hearing, the Board sought clarification regarding the necessity of the proposed deep excavation when borings showed quality soil at significantly shallower depths; and

WHEREAS, in response, the applicant clarified that although suitable soil on which to construct a foundation was found at shallower depths, such soil also contained large boulders, which must be removed in order to properly construct the building; as such, a deep excavation was not anticipated by the borings, but became necessary after excavation began; and

WHEREAS, the applicant also states that the poor quality of the soil is unique in the surrounding area; according to the geotechnical report, the soils in the area were deposited during the glacial era, which is characterized by a variable pattern in soil composition; thus, a significant number of nearby sites have soil conditions more conducive to development; and

WHEREAS, the applicant states that the site's shape makes it infeasible to develop the site with a conforming use; and

WHEREAS, the applicant states that the site's northern and southern boundaries have a jagged quality, which gives the site its unique shape; the northern boundary jogs as it proceeds east and changes direction five times at five different angles before it reaches Bowne Street; the southern boundary is similar irregular, although not as angled – it changes direction four times at right angles; the overall effect of the jogging boundary lines is a dramatic tapering of the site from Union Street, where the site has approximately 126 feet of frontage, to Bowne Street, where the site's frontage is just seven feet; and

WHEREAS, the applicant asserts that the irregularity and tapering of the site limits the buildable areas of the lot, constrains the building envelope, creates design inefficiencies, and prevents utilization of the available floor area on the site; and

WHEREAS, for example, the applicant states that—in contrast to an ordinary four-cornered building—a building at the site must have no fewer than 11 corners, each of which

requires corner structural panels; accordingly, because corner panels cost more than typical panels, increased construction costs are a direct result of the site shape; and

WHEREAS, additionally, the applicant states that the site's shape adversely affects standard dwelling unit layouts in a conforming building; because of the angles and curves of the building envelope, the interior environment of a dwelling unit must be adjusted using custom installation, curvilinear materials and non-standard equipment and appliances; accordingly, the applicant states that the site's shape prevents a sufficient number of suitably-sized, modern dwelling units to offset the premium costs of construction; and

WHEREAS, finally, the applicant contends that the site's shape—particularly the jogging of the site's boundary lines—results in a disproportionately long perimeter (in comparison to the site's lot area), which in turn increases the number of adjacent sites to be protected with underpinning and shoring during construction, at significant cost; and

WHEREAS, as to uniqueness, the applicant represents that there are no sites of even remotely similar shape within ten blocks of the site, making its shape unique in the surrounding area; and

WHEREAS, the applicant states that it analyzed the feasibility of developing the site as-of-right with a mixed residential and community facility building (rental) with the following bulk parameters: 156,154 sq. ft. of floor area (4.8 FAR)(44,485 sq. ft. of community facility floor area (1.38 FAR) and 111,259 sq. ft. of commercial floor area (3.42 FAR)); 14 stories; a total building height of 139'-11"; 161 dwelling units; and 200 accessory parking spaces; and

WHEREAS, the applicant states that although the as-of-right scenario's floor-to-ceiling heights are significantly reduced in order to achieve an as-of-right height within the FAA height limitations and such reductions reduce the value of the building significantly; and

WHEREAS, accordingly, the applicant states that a conforming development does not produce enough revenue to offset the premium construction costs that result from the site's substandard soil conditions and unusual shape; and

WHEREAS, based upon the above, the Board finds that, in accordance with ZR § 72-21(a), the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant assessed the financial feasibility the following scenarios: (1) a 14-story as-of-right mixed residential (rental) and community facility building with a total height of 139'-11"; (2) a 12-story as-of-right mixed residential (apartment hotel) and community facility building with a total height of 155'-0"; (3) a lesser-variance (no special permit) 12-story mixed hotel and community facility with a total height of 155'-0"; (4) an 18-story mixed residential (apartment hotel) and community facility

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building with a total height of 243'-0" pursuant to a special permit under ZR § 73-66; (5) an 18-story mixed residential (condominium) and community facility building with a total height of 243'-0" pursuant to a special permit under ZR § 73-66; (6) a 14-story mixed residential (rental) and community facility building with a total height of 177'-0" on a typical rectangular site; and (7) the proposal; and

WHEREAS, the applicant concludes that, other than the scenario involving the conceptual rectangular lot, only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board questioned: (1) the size and the proposed number of hotel rooms, as the most efficient use of the bulk; and (2) the comparable sites used to determine the site value; and

WHEREAS, in response, the applicant provided: (1) a letter from Starwood hotels, the presumptive tenant of the building, which explains Starwood's requirements for room size and type; and (2) additional comparable sites and a revised analysis on site value; and

WHEREAS, based upon its review of the record, the Board has determined, per ZR § 72-21(b), that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is characterized by a mix of commercial, community facility, and residential uses, including multiple dwellings, one- and two-family homes, schools, playgrounds, and the bustling commercial areas along and around Main Street; Bowne Street also includes a number of commercial uses at the ground floor; the wider area includes Downtown Flushing, the Queens Botanical Garden, Flushing Hospital Medical Center, and Citi Field; and

WHEREAS, the applicant represents that there are more than a dozen hotels three blocks north and west of the site in the Downtown Flushing area; and

WHEREAS, as to the immediately adjacent sites, the applicant states that directly south of the site are a four-story multiple dwelling and a nine-story nursing home and rehabilitation center, and directly north of the site are a two-story, two-family building, a two-story church, a six-story multiple dwelling, and a one-story supermarket; and

WHEREAS, as to bulk, the applicant states, as noted above, that the proposal is within the maximum 4.8 FAR permitted in the underlying R7-1 district, as well as all the bulk regulations regarding yards, sky-exposure plane, open space, and setback; and

WHEREAS, as to traffic and parking, the applicant provided a study, which reflects that the proposal will not have significant negative impacts on parking or traffic; in fact, the applicant asserts that an as-of-right residential

building would have a greater impact on parking and traffic, because hotel guests typically use public transportation and travel during different periods of the day than residents; and

WHEREAS, the applicant also notes that, consistent with the community board's request, there will be no delivery of materials or hotel guests to the curbside; instead, the underground parking area will be used so as to minimize the number of vehicles in front of the building; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from its soil conditions and shape; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board notes that the applicant explored six other scenarios, including a hotel scenario with fewer rooms, in order to demonstrate that the proposal is the minimum necessary to afford relief; accordingly, the Board is persuaded that the proposal satisfies 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 applicant asserts that the proposal satisfies all findings required for the Board to grant a special permit pursuant to ZR § 73-66; and

WHEREAS, the Board notes that under ZR § 73-66, it may permit the construction, enlargement, or reconstruction of a building or other structure in excess of the height limits established under ZR §§ 61-21 and 61-22, provided that: (1) the applicant submits a site plan, with elevations, showing the proposed building or other structure in relation to such maximum height limits; and (2) the Board finds that such proposed building or other structure, enlargement, or reconstruction 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; and

WHEREAS, finally, ZR § 73-66 specifically requires that the Board refer the application to the Federal Aeronautics Administration ("FAA") for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways; and

WHEREAS, the Board notes that the height limit established for any building at the site under ZR §§ 61-21 and 61-22 is 155'0" and the proposal reflects a maximum building

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height of 243'-0" (including bulkheads); and

WHEREAS, the applicant submitted the required site plan showing the proposed building in relation to the maximum height limits; and

WHEREAS, the applicant also submitted a July 23, 2009 letter from the FAA, which states that the proposed height (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) will not constitute a danger to the safety of air passengers or disrupt established airways; and

WHEREAS, accordingly, the Board finds that the proposal will not constitute a hazard 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; and

WHEREAS, the Board finds, consistent with ZR § 73-03, that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, further, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to Sections 617.2 and 617.6 of 6NYCRR; 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. 13-BSA-072Q, dated June 3, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

1977, as amended, and makes each and every one of the required findings ZR § 72-21, 73-66, and 73-03, to permit, on a site partially within an R7-1 (C1-2) zoning district and partially within an R7-1 zoning district, the construction of a 18-story mixed community facility and commercial building to be occupied as a transient hotel (Use Group 5) with 180 rooms and an ambulatory diagnostic or treatment health care facility (Use Group 4), contrary to the use and height regulations set forth in ZR §§ 22-10 and 61-20, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 13, 2014" – twenty-one (21) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: 18-stories; a maximum of 156,154 sq. ft. of floor area (4.8 FAR)(44,895 sq. ft. of community facility floor area (1.38 FAR) and 111,259 sq. ft. of commercial floor area (3.42 FAR)); a maximum total building height of 229'-6" (243'-0", including bulkheads); a maximum of 31-percent lot coverage; a minimum rear yard depth of 60'-0"; two side yards with minimum widths of 8'-0" in the commercial portion of the building; 180 hotel rooms; and 300 accessory parking spaces;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

**103-13-BZ
CEQR #13-BSA-032K**

APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC, owner.

SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building, contrary to §42-10 zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256' west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 28, 2013, acting on Department of Buildings Application No. 320540866, reads in pertinent part:

Proposed use is not permitted in M1-1 zoning district, as per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in the *City Record*, with continued hearings on February 4, 2014 and March 4, 2014, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Jefferson Street, between Stanwix Street and Evergreen Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Jefferson Street, a depth of 100 feet, and 2,500 sq. ft. of lot area; and

WHEREAS, the site is currently vacant; however, the applicant notes that, historically (since at least 1921, according to that year's Belcher Hyde Atlas Map), the site was occupied by a two-story multiple dwelling, which was fire-damaged in the 1990s and eventually demolished in 2001; and

WHEREAS, the applicant proposes to construct a four-story multiple dwelling in accordance with the bulk regulations applicable for a quality housing building in an R6 district; specifically, the building will have approximately 5,490 sq. ft. of floor area (2.2 FAR) and, 60 percent lot coverage, eight dwelling units, a rear yard depth of 36'-0", no side yards or parking spaces, and a total building height of 43'-6"; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant requests the subject variance; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site has a small lot size of 2,500 sq. ft., a narrow lot width of 25 feet and is vacant; (2) the site has a history of residential use and is adjacent to residential buildings on two sides, and across the street; and (3) the site is located just outside the nearby North Brooklyn Industrial Business Zone ("IBZ"); and

WHEREAS, the applicant represents that the site's narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow

floor plates that would be inadequate space for providing a loading dock; further, the applicant states based on the small lot size, a conforming development would provide a maximum floor plate of 2,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, in support of its claim that the site—with its narrow lot width and small lot size—is not feasible for modern manufacturing use, the applicant surveyed the surrounding manufacturing uses and found that all seven manufacturing uses on the subject block and the block across the street are located on wider lots with more lot area than the site; and

WHEREAS, the applicant also submitted a study of the vacant sites within the subject M1-1 district to support its assertions that such vacancy constitutes a unique hardship for the site; and

WHEREAS, based on the study, the applicant concludes that the site is the only vacant site within the study area that is not already used in conjunction with an adjacent site, in common ownership with one or more adjacent sites (which would allow for an assemblage that would be more conducive to the construction of a building for conforming uses), or located on a corner (corner lots are more conducive to a commercial or manufacturing use because of the increased visibility and street frontage access points); and

WHEREAS, in addition, the applicant states, as noted above, that for approximately 70 years, the site was occupied by a multiple dwelling; as such, the size and width of the site has historically been to accommodate residential uses; and

WHEREAS, the applicant further represents that the site is adjacent to residential uses on two sides and across the street, and that the existence of residential buildings on the nearby lots further devalues the site for a conforming use and would result in lower rental incomes and higher vacancy rates; and

WHEREAS, finally, the applicant states that the site is located just outside of an IBZ, which makes it ineligible for certain financial benefits associated with locating new businesses within an IBZ; as such, the applicant asserts that the site cannot compete with similar sites within the IBZ; and

WHEREAS, the applicant concludes that the site is uniquely unsuitable for conforming uses because of its width, size, vacancy, history of residential use, adjacency to residential uses, and location just outside the IBZ; and

WHEREAS, the Board agrees that the site has a combination of unique physical conditions including its lot width and size, vacancy, historic residential use, and adjacency to other residential uses, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 2,500 sq. ft. of floor area occupied by a

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conforming use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject block is primarily developed with residential buildings with some manufacturing/industrial uses; the applicant notes that directly across Jefferson Street is an R6 zoning district, where the proposed use would be as-of-right; and

WHEREAS, as to adjacent uses, as noted above, residential uses about two sides of the lot (the north and west sides), a vacant one-story manufacturing building is located directly east of the site and south, across Jefferson Street, are multiple dwellings; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1921 until 2001; thus, the applicant asserts that the site and the subject stretch of Jefferson Street have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the neighborhood character than a conforming use would be; and

WHEREAS, as to bulk, the applicant states that the building complies in all respects with the bulk regulations for a quality housing building within an R6 zoning district; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the compatibility of the proposed building height (43'-6") and number of stories (four) with the surrounding buildings; and (2) the compliance of the proposed interior court; and

WHEREAS, in response, the applicant provided a building height study and a streetscape, which reflects that 13 buildings along Jefferson Street between Stanwix Street and Evergreen Avenue have a height of at least 40'-0", five of which have a height of 45'-0"; and

WHEREAS, in addition, the applicant acknowledged that the originally-proposed court did not comply and revised the plans to eliminate the interior court; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's

unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13BSA032K, dated April 12, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 16, 2014" – nine (9) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 5,490 sq. ft. (2.2 FAR), maximum lot coverage of 60 percent, a minimum rear yard depth of 36'-0", no side yards or parking spaces, and a maximum building height of 43'-6", as indicated on the BSA-approved plans;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved

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only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

213-13-BZ

CEQR #14-BSA-009R

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 12, 2013, acting on DOB Application No. 520073802, reads in pertinent part:

Proposed ambulatory diagnostic or treatment health care facility listed in Use Group 4 within lower density growth management area exceeds 1,500 sq. ft. allowed per ZR 22-14(A); and

WHEREAS, this is an application under ZR §§ 73-126 and 73-03, to permit, on a site within an R3A zoning district, the construction of a two-story mixed residential (Use Group 2) and community facility (Use Group 4) building, with 5,967 sq. ft. of floor area, to be occupied by an ambulatory diagnostic or treatment health care facility, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application October 22, 2013, after due notice by publication in The City Record, with a continued hearing on November 26, 2013, December 17, 2013, February 25, 2014, March 25, 2014, April 29, 2014, May 20, 2014, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, certain members of the surrounding

community submitted testimony in opposition to the application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Victory Boulevard and Ridgeway Avenue, within an R3A zoning district; and

WHEREAS, the site has approximately 127 feet of frontage along Ridgeway Avenue, approximately 100 feet of frontage along Victory Boulevard, and 12,712 sq. ft. of lot area; and

WHEREAS, the applicant states that the site was historically two lots (Tax Lots 22 and 24); Lot 22 is occupied by a one-story mixed residential and commercial building; Lot 24 is occupied by a one-story residential building; and

WHEREAS, the applicant proposes to demolish the building on Lot 24 and alter and enlarge the building on Lot 22; the enlargement will increase the floor area of the building from 1,216.9 sq. ft. (0.1 FAR) (347.2 sq. ft. of residential floor area and 869.8 sq. ft. of community facility floor area) to 6,314.2 sq. ft. of floor area (0.5 FAR) (347.2 sq. ft. of residential floor area and 5,967.1 sq. ft. of community facility floor area); and

WHEREAS, the applicant notes that 17 accessory parking spaces will also be provided on the site; and

WHEREAS, the applicant notes that in the subject R3A zoning district, which also within a Lower Density Growth Management Area, an ambulatory diagnostic or treatment facility is limited to 1,500 sq. ft. of floor area, pursuant to ZR § 22-14; however, pursuant to ZR § 73-126, the Board may permit an ambulatory diagnostic or treatment health care facility with maximum floor area of 10,000 sq. ft., provided that: (a) the amount, type, and distribution of open area on the zoning lot are compatible with the character of the neighborhood; (b) the distribution of bulk on the zoning lot will not unduly obstruct access of light and air to adjoining properties or streets; and (c) the scale and placement of the building on the zoning lot relates harmoniously with surrounding buildings; and

WHEREAS, the Board notes that other than the increase in floor area beyond 1,500 sq. ft. authorized by the special permit, the ambulatory diagnostic or treatment health care facility must comply with all zoning parameters of the underlying district; and

WHEREAS, the applicant states that, aside from the requested increase in community facility floor area, the proposal complies in all respects with the zoning parameters of the subject R3A zoning district; and

WHEREAS, the applicant also states that the proposed building will have 5,967.1 sq. ft. (0.47 FAR) of community facility floor area, which is significantly less than the maximum permitted under the special permit (10,000 sq. ft.), and less than half of the maximum FAR permitted for community facilities in the subject R3A zoning district (1.0 FAR); and

WHEREAS, turning to the ZR § 73-126 findings, the applicant contends that the proposal’s the amount, type, and distribution of open area on the zoning lot are compatible with the character of the neighborhood; and

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WHEREAS, specifically, the applicant states that the proposed 37.5 percent lot coverage is significantly less than the maximum permitted lot coverage (55 percent); in addition, the applicant examined the nature and amount of open space of the 54 sites surrounding the site, and found that 44 sites provide less than open space than the subject site; the applicant also notes that 25 percent of the open space on the site will be grass or landscaped and that open space on nearby sites often includes grassy areas, paved surfaces, pools, and accessory garages; and

WHEREAS, accordingly, the applicant asserts that the site's proposed open area entirely compatible with the character of the neighborhood; and

WHEREAS, as to the distribution of bulk on the zoning lot and its impacts on the light and air of adjoining properties or streets, the applicant contends that the proposal has no impact on adjoining properties, in that it is only two stories (with a wall height of approximately 21 feet), it is located more than 65 feet from the nearest building, and it provides two front yards with depths of ten and 23 feet; and

WHEREAS, as to the harmoniousness of the building with the surrounding buildings in terms of scale and placement on the site, the applicant states that, as noted above, the building complies in all respects with the bulk regulations regarding FAR, height, yards, lot coverage, and parking; the applicant also notes that the footprint of the enlarged building will be substantially similar to the footprints of the existing buildings on the lot; thus, the historic site condition is reflected in the proposal; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the compatibility of a flat-roof design with the surrounding buildings and directed the applicant to provide a streetscape comparing its design with the existing context; and (2) the number of examination rooms proposed; and

WHEREAS, in response, the applicant provided the streetscape and revised the proposal to reflect a hipped-roof; the applicant asserts also asserts that the surrounding neighborhood is characterized by its architectural diversity and that the proposal seeks to incorporate the disparate elements; and

WHEREAS, the Board agrees that the context is varied and it finds that the hipped-roof is more in keeping with the nearby residential buildings; and

WHEREAS, as to the number of examination rooms proposed, the applicant explained that the examination rooms shown on the drawings were actually examination, waiting, and specialized equipment rooms, and that many rooms will be used non-simultaneously; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board also finds that the proposal will

not interfere with the renovation of the adjacent fire station, and will otherwise not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

WHEREAS, the project is classified as Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14-BSA-009R, dated July 10, 2013; and

WHEREAS, the EAS documents that the operation of the facility would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, the construction of a two-story mixed residential (Use Group 2) and community facility (Use Group 4) building, with 5,967 sq. ft. of floor area, to be occupied by an ambulatory diagnostic or treatment health care facility, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 12, 2014" –(9) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: two stories, a maximum wall height of 21 feet, a maximum residential floor area of 347.2 sq. ft., a maximum community facility floor area of 5,967.1 sq. ft. of community facility floor area, a maximum lot coverage of 37.5 percent, and 17 parking spaces, as reflected on the BSA-approved plans;

THAT all landscaping will be provided and maintained in accordance with the approved plans;

THAT substantial construction will be completed in

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accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

273-13-BZ

CEQR #14-BSA-044M

APPLICANT – Akerman Senterfitt, LLP, for 321-23 East 60th Street LLC, owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the development of an eight-story residential building containing 28 dwelling units, contrary to use regulations (§32-10). C8-4 zoning district.

PREMISES AFFECTED – 321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit. Block 1435, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 20, 2013, acting on DOB Application No. 121331362, reads, in pertinent part:

Proposed residential use (UG2) within C8-4 zoning district is not permitted; contrary to ZR 32-11; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C8-4 zoning district, the construction of an eight-story residential building (Use Group 2), contrary to ZR § 32-11; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in the *City Record*, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is an irregularly-shaped interior located on the north side of East 62nd Street between Second Avenue and First Avenue, within a C8-4 zoning

district; and

WHEREAS, the site has 8.15 feet of frontage along East 62nd Street and 3,749 sq. ft. of lot area; and

WHEREAS, the western boundary of the site has an arcing quality; it is formed by a tax lot that coincides with an exit from the Ed Koch Queensboro Bridge, giving the site a trapezoidal quality; as such, the lot narrows considerably from the rear lot line, which has a width of 48.33 feet, to the front lot line, which has a width of 8.15 feet; in addition, at ground level, the area beneath the exit is a paved roadway, complete with curbs and sidewalks; thus, the site is bounded on only two sides by buildings and has the appearance of a corner lot; and

WHEREAS, the site is vacant; applicant states that the current and historic use of the site is for parking automobiles; and

WHEREAS, the applicant proposes to construction an eight-story residential building with 24,368.5 sq. ft. of floor area (6.5 FAR), 28 dwelling units, a total building height of 93'-0", and nine accessory parking spaces; and

WHEREAS, because Use Group 2 is not permitted within the subject C8-4 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) trapezoidal shape and a narrow lot width; and (2) proximity to the exit of the Ed Koch Queensboro Bridge and the Roosevelt Island Tram; and

WHEREAS, the applicant states that the site has a trapezoidal shape, which narrows the lot width from 48.33 feet to 8.15 feet; and

WHEREAS, the applicant asserts that this unique condition—there are no remotely similar sites within 400 feet of the site—creates significant building inefficiencies and does not result in a marketable floorplate for a conforming use, which require two sets of stairs, elevators, and corridors; and

WHEREAS, likewise, the applicant states that, due to the site’s curved shape, a building that utilizes the available will have a curved façade, which is more expensive than a flat façade; and

WHEREAS, in addition, the site’s proximity to an exit of the Ed Koch Queensboro Bridge presents a unique burden in developing site, particularly with respect to cost; and

WHEREAS, specifically, the applicant represents that any development of the site will require higher site supervisory costs and insurance premiums (due to the risks associated with damaging a major thoroughfare), increased seismic monitoring, and a greater quantity of sidewalks, curbs, and plaza paving; and

WHEREAS, the applicant also states that a crane cannot be used during construction because of the location of the bridge and the exit, the narrow width of the site along East 60th Street, and the location of wires for the Roosevelt Island Tram (which run directly over East 60th Street); and

WHEREAS, the applicant notes that because a crane cannot be used, it must employ a reinforced concrete frame

MINUTES

rather than a structural steel frame; and

WHEREAS, the applicant provided an analysis of the construction costs for the site; according to that report, the site's unique conditions result in \$709,365 in premium construction costs; and

WHEREAS, the applicant explored the feasibility of a conforming development with 24,368.5 sq. ft. of floor area (6.5 FAR) (18,745 sq. ft. of commercial floor area (5.0 FAR) and 5,623.5 sq. ft. of community facility floor area (1.5 FAR)); such development yields floorplates of 3,351 sq. ft. that vary in width from 48 feet to 17 feet, which the applicant states are not conducive to either commercial or community facility uses; and

WHEREAS, in addition, as noted above, the applicant states that the conforming development must include two sets of stairways and an elevator bank, which decreases the overall efficiency of the building and further limits its rentable portions; and

WHEREAS, accordingly, the applicant concludes that conforming uses are infeasible at the site, due to the inefficient building that results from its trapezoidal shape and narrow width, and the premium construction costs inherent in the development of a site in close proximity to one of the city's major bridges; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in addition to the proposal, the applicant examined the economic feasibility of: (1) an as-of-right 6.5 FAR mixed commercial and community facility building with parking on the first story, two stories of community facility use, and six stories of office use; and (2) a lesser-variance residential development with only six stories and 5.0 FAR; and

WHEREAS, the applicant concluded that the as-of-right scenario and the lesser variance scenario resulted in negative rates of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it economically viable; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return, in accordance with ZR § 72-21(b); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of medium- to high-density residential and commercial uses and, of course, the Ed Koch Queensboro Bridge and its many elevated approaches and structural elements; the applicant notes that the portion of East 60th Street east of the bridge is predominantly residential with some ground floor commercial; and

WHEREAS, as to adjacent uses, immediately north of the site are three five-story tenement buildings, immediately east of the site is a large commercial building that is 146 feet in height and spans the full width of the block from East 60th Street to East 61st Street; as noted above, streets abut the site to the west and south; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 28 dwelling units will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant states that the building's wall and building height of 93'-0" is comparable to buildings in the immediate vicinity, 53'-0" feet shorter than the adjacent commercial building, and well within the maximum building height in the subject C8-4 district (210'-0"); and

WHEREAS, at hearing, the Board directed the applicant to provide additional details regarding: (1) why a crane cannot be used to lift materials into the site; (2) the proposed noise attenuation and air quality preservation measures; and

WHEREAS, in response, the applicant provided a supplemental statement from the project architect, which further describes the constraints of the site, including its inability to use a crane; and

WHEREAS, as to the Board's noise concerns, the applicant states that proposal includes specially-glazed windows, which will provide 25 dB(A) of attenuation, resulting in interior noise levels that are within acceptable ranges; as to air quality, the applicant states that the HVAC systems for the dwelling units will provide fresh air in addition to heating and cooling; therefore, residents will be able to receive fresh air without opening external windows; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's trapezoidal shape and its proximity to the Ed Koch Queensboro Bridge; the Board notes that the applicant provided copies of the 1969 and 1970 tax maps, which coincide with the construction of the bridge exit and reflect the formation of the site in its current form; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

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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. 14BSA044M, dated September 24, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C8-4 zoning district, the construction of an eight-story residential building (Use Group 2), contrary to ZR § 32-11, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 16, 2014"- seven (7) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 24,368.5 sq. ft. of floor area (6.5 FAR); a maximum of 28 dwelling units; a maximum total building height of 93'-0"; one front yard along East 60th Street with a minimum depth of 10'-0"; and a maximum of nine accessory parking spaces;

THAT sound attenuation will be in accordance with the BSA-approved plans;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

289-13-BZ

CEQR #14-BSA-057K

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new, 304,000 s.f. ambulatory care facility on the campus of New York Methodist Hospital, contrary to floor area (§§24-11, 24-17 and 77-02), lot coverage (§24-11), rear yard (§24-382), height and setback (§24-522), rear yard setback (§24-552), and sign (§22-321) regulations. R6, C1-3/R6, and R6B zoning district.

PREMISES AFFECTED – 473-541 6th Street, aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings' Executive Zoning Specialist, dated February 6, 2014, acting on Department of Buildings Application No. 320576952, reads in pertinent part:

1. Proposed FAR in R6B and R7B portions both exceed maximum permitted because proposed "floor area" distribution across district boundary lines is not permitted; contrary to ZR 24-11, ZR 24-17, and ZR 77-02.
2. Proposed lot coverage of (a) corner lot in R6, (b) interior lot in R6, (c) through lot in R6/R6B districts, and (d) corner lot in R7B exceeds the maximum; contrary to ZR 24-11.
3. Proposed rear yard at through lot portion in zoning districts R6 and R6B is contrary to ZR 24-382 Required Rear Yard Equivalent.
4. Height and setback limitations for: (a) the R6 district portion, above both narrow (6th Street) and wide street (8th Avenue) and (b) the R6B . . . district portions above narrow street (5th Street) are both contrary to ZR 24-522.
5. Required rear setbacks for R6 and R6B district portions are contrary to ZR 24-552.
6. Proposed signs exceed maximum permitted number and surface area contrary to ZR 22-321.
7. Proposed building portion in required rear yard on interior lot portion, beyond 100 feet of a wide street, is not a permitted obstruction as per ZR 24-33(b)(3)(iii), and is therefore contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21 to

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permit within R6, R6B, and R7B zoning districts, the construction of a new ambulatory care facility (the “Center for Community Health” or the “Center”) on the campus of New York Methodist Hospital (“NYM” or the “Hospital”) that does not comply with zoning regulations for FAR, lot coverage, rear setback, rear yard, rear yard equivalent, and signage, contrary to ZR §§ 22-321, 24-11, 24-17, 24-33, 24-36, 24-382, 24-522, 24-552, and 77-02; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in the *City Record*, with a continued hearing on April 8, 2014, and then to decision on June 17, 2014; and

WHEREAS, at the April 29, 2014 public hearing, the Board set a May 20, 2014 decision date; and

WHEREAS, however, subsequent to the April 29, 2014 hearing, a representative of Preserve Park Slope communicated with Board staff and NYM about its request for supplemental documents from NYM; the Board declined to request the documents and NYM declined to provide the documents directly; and

WHEREAS, Preserve Park Slope then sought judicial relief to obtain the documents in New York State Supreme Court by Order to Show Cause; and

WHEREAS, the court issued a stay which prohibited the Board from closing the hearing and rendering a decision as scheduled on May 20, 2014; on June 4, 2014, the court lifted the stay but did not issue a ruling on the subpoena request, which is pending; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application with the following conditions: (1) height compliance within the R6 zoning district; (2) height and setback compliance within the R7B zoning district; (3) reduction of streetwall height and building height and the inclusion of an additional setback within the R6B zoning district; (4) that NYM provide notice of its New York State Department of Health Certificate of Need (CON) application at the time it is filed; (5) that NYM develops a long-range plan; (6) that signage be limited to the revised reduced amount; (7) that the usage of the Eighth Avenue and Sixth Street entrance be limited to employees, emergency egress, and Urgent Care facility use during late afternoon and evening hours; (8) that parking be reduced by at least 189 spaces; (9) that NYM participate with the Traffic Task Force to address transportation impacts and to perform a full scale traffic study; (10) that NYM participate in continued discussions regarding building design and materials; and (11) that NYM continue to participate in discussions with a Construction Task Force; and

WHEREAS, New York State Assemblymembers Joan L. Millman and James F. Brennan and New York City Councilmember Brad Lander provided testimony in support of the application; and

WHEREAS, the M.S. 51 public school provided

testimony stating that after initially having concerns about traffic safety and pollution as well as environmental impacts during the construction period and following completion of the building, it is satisfied after later communication with NYM demonstrated efforts to address these issues; and

WHEREAS, the P.S. 39 public school Parent Association provided a submission which identified concerns with traffic safety and air pollution; and

WHEREAS, Park Slope Neighbors, a community group, submitted testimony in support of the application on the condition that the offstreet parking be reduced; and

WHEREAS, Preserve Park Slope, a community group, represented by counsel, provided opposition to the application, citing the following primary concerns: (1) NYM may not rely on the deference defined by the courts in Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), namely the prohibition against inquiry into programmatic needs because NYM is not an educational institution; (2) evidence in support of NYM’s programmatic needs is deficient; (3) the evidence in support of programmatic needs is inadequate in that it differs from that in prior hospital variance cases and standards set by the Board; (4) the proposal is incompatible with the character of the neighborhood and a lesser variance involving construction over the garage (the “Garage Alternative”) would be a viable alternative; (5) there will be traffic impacts including on safety and the environment; (6) that the proposal does not reflect the minimum variance; and (7) that NYM should be required to adhere to the Community Board’s conditions; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about whether the programmatic needs for the application had been established, traffic and other environmental impacts, and whether the proposal is compatible with the neighborhood character; and

WHEREAS, opponents to the project are, collectively, the “Opposition;” and

WHEREAS, this application is brought on behalf of NYM, a non-profit hospital, research, and educational facility; and

WHEREAS, a companion application to modify a prior approval for parking filed under BSA Cal. No. 142-92-BZ was decided at the same hearing and allows for the enlargement of the zoning lot (the “Zoning Lot”); and

WHEREAS, the zoning lot comprises the majority of Block 1084; it includes Tax Lots 39, 164, 1001, and 1002, and has frontages along Fifth Street, Sixth Street, Seventh Avenue, and Eighth Avenue; the applicant notes that when the noted special permit was granted (BSA Cal. No. 142-92-BZ), the site comprised Lots 164, 1001, and 1002, however, at the time the lots were designated as Lots 1, 17, and 64; as for Lot 39, it was formed by the merger of former Lots 25, 26, 28, 40-44, 46, 48, and 50-59; and

WHEREAS, the NYM main campus is located on two adjacent blocks bounded by Seventh Avenue, Fifth Street, Eighth Avenue, and Seventh Street; the development site (the “Development Site”) is located on the eastern portion of

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the northern block, with frontages on Sixth Street, Fifth Street, and Eighth Avenue and will be part of a zoning lot that consists of the parcels designated as Block 1084, Lots 39, 164, 1001, and 1002 (the "Zoning Lot"); and

WHEREAS, the Development Site is located partially within an R6 zoning district, partially within an R6B zoning district, and partially within an R7B zoning district; and

WHEREAS, the Zoning Lot has approximately 510 feet of frontage along Fifth Street, approximately 696 feet of frontage along Sixth Street, 200 feet of frontage along Seventh Avenue, 200 feet of frontage along Eighth Avenue, and 120,569 sq. ft. of lot area; and

WHEREAS, there are a series of contiguous parcels fronting on Fifth Street which are not part of the Zoning Lot ("out-parcels") and which give the Development Site a U-shape; and

WHEREAS, the Development Site is currently occupied by NYM-owned low-rise buildings, originally constructed as walk-up residences, and a parking lot, all of which would be demolished in connection with the construction of the Center; and

WHEREAS, the Hospital notes that calculations for lot area and width, use group, floor area/FAR, lot coverage, required rear yards, parking, and loading are for the Zoning Lot; other calculations are for the Development Site, which comprises a majority of the zoning lot and is located in R6, R6B, and R7B zoning districts;

WHEREAS, the Hospital initially proposed to construct a new building for the Center which would include 311,000 sq. ft. of community facility floor area (3.82 FAR), seven stories and two mechanical floors, and a maximum height of 152 feet; and

WHEREAS, an interim proposal reflected 304,000 sq. ft. of floor area, but was ultimately revised again to include a reduction in height and increases in certain setback depths to reflect the current proposal; and

WHEREAS, specifically, the Hospital states that in response to comments from the Board and the conditions set forth in the Community Board's recommendation, reductions were made to the height and setback of the building in the R6B and R7B zoning districts including: (1) the R7B portion of the building was reduced in height so that it now complies with the applicable height and setback regulations; (2) the front setback on Fifth Street at the fourth floor in the R6B district was increased by an additional 15 feet, to a total depth of 20 feet from the street line; and (3) the front setback on Fifth Street at the fifth through seventh floors in the R6B district was increased by an additional 21 feet, to a total depth of 41 feet from the street line; and

WHEREAS, the proposed Center will occupy a single building with seven stories and two mechanical floors, and a maximum height of 150 feet with 299,000 sq. ft. of floor area; it will include: an ambulatory surgery center; a new endoscopy suite; clinical institutes for physician practice care delivery (the "Institutes"); an urgent care center; and a below-grade parking facility with connections to the Hospital's existing parking facilities to the west; the Institutes would include

cardiology, neurosciences, orthopedics, urology, otolaryngology (ENT), a women's center, and cancer care with diagnostic radiology services; and

WHEREAS, additionally, the Hospital plans to construct a below-grade pedestrian and utility tunnel between the proposed Center and the existing Hospital facilities across Sixth Street to the south, which tunnel would be subject to the approval of a revocable consent by the NYC Department of Transportation; and

WHEREAS, the Hospital asserts that the building's floor plate dimensions and configurations would accommodate needed ambulatory care facilities, while providing adjacencies and direct connections to promote efficient, collaborative health care with minimal risk of contamination and infection; and

WHEREAS, the existing buildings include the following: (1) on the southern portion of the Development Site are five two-story buildings located to the immediate west of the parking lot, which have been converted from residential use to NYM-affiliated medical facilities and offices, and three four-story walk-ups located farther west, which contain apartments for NYM staff and medical students and on-call rooms for NYM departments; (2) on the northeast corner of the Development Site are five three-story walk-ups, which are all vacant; (3) on the northwest corner, fronting on Fifth Street, are three four-story residential walk-ups, which have been vacated in connection with the development of the Center; and (4) a parking lot, located on the southeast corner of the Development Site, which serves NYM doctors and contains 79 spaces; and

WHEREAS, the remainder of the Zoning Lot to the west of the Development Site is occupied by two Hospital buildings to remain: the Medical Office Pavilion, a five-story building fronting on 7th Avenue, containing hospital-related facilities, ground-floor retail, and a 518-space below-grade accessory parking garage with surface parking; and the Wesley House, a 12-story building containing hospital-related facilities and staff dwellings; and

WHEREAS, the existing buildings to remain on the Zoning Lot are the subject of a variance and special permit granted by the Board on January 11, 1994, which waived applicable height and setback, parking, loading, and curb cut regulations to allow the construction of the Medical Pavilion and the garage (BSA Cal. No. 142-92-BZ); the special permit allowed the existing parking garage and deck to contain 518 parking spaces, consisting of 76 required parking spaces accessory to retail uses, 49 required parking spaces accessory to the Wesley House, and 393 permitted parking spaces accessory to hospital-related uses; and

WHEREAS, the Hospital states that the existing buildings to the west of the Development Site must remain in order to allow it to continue to operate effectively; this includes the existing garage, which cannot be vertically enlarged in a way that satisfies the Hospital's programmatic needs; and

WHEREAS, the R6, R6B, and R7B zoning districts allow Use Groups 1 and 2 residential uses and Use Groups 3

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and 4 community facility uses, including ambulatory care facilities and hospitals; the C1-3 commercial overlay district, which applies along the Zoning Lot's Seventh Avenue frontage but not to the Development Site, allows additional limited commercial uses; and

WHEREAS, the maximum permitted FAR for community facilities is 4.8 in the R6 district, 2.0 in the R6B district, and 3.0 in the R7B district, pursuant to ZR § 24-11; these limits allow, respectively, 481,670 sq. ft. of floor area on the R6 portion of the Zoning Lot, 22,426 sq. ft. of floor area on the R6B portion of the Zoning Lot, and 27,024 sq. ft. of floor area on the R7B portion of the Zoning Lot; pursuant to ZR § 77-02 (Zoning Lots Not Existing Prior to Effective Date or Amendment of Resolution), for a split zoning lot that did not exist on the effective date of the Zoning Resolution or an applicable amendment, each portion of the zoning lot is subject to the regulations applicable in the zoning district in which the portion is located; and

WHEREAS, the Center would not utilize all of the available floor area on the Zoning Lot, but it would require the distribution of permitted floor area across zoning district boundaries, from the R6 portion to the R6B and R7B portions; the R6B portion of the Zoning Lot would contain 42,150 sq. ft. of floor area, exceeding the maximum permitted amount by 19,724 sq. ft.; the R7B portion would contain 39,600 sq. ft. of floor area, exceeding the maximum permitted amount by 12,576 sq. ft.; and the R6 portion of the Zoning Lot would contain 378,134 sq. ft. of floor area, including 161,534 sq. ft. in existing buildings on the Zoning Lot to remain; and

WHEREAS, further, the Center would require waivers from the following bulk regulations within the R6 zoning district due to: (1) a lot coverage of 94.7 percent on the corner lot portion and 66.8 on the interior lot portion fronting Sixth Street, and 92.2 percent lot coverage on the other through lot portion (a lot coverage limitation of 65 percent on interior and through lots and 70 percent on corner lots is permitted (ZR § 24-11)); (2) rear yard and rear setback relief because the one-story portion of the Center located in the interior lot portion of the Zoning Lot is located more than 100 feet from Eighth Avenue and therefore is not permitted in the rear yard (ZR §§ 24-33 and 24-36) (a required rear yard of 30 feet for interior lot portions of a zoning lot and a rear yard equivalent of 60 feet for through lot portions of a zoning lot, with a required rear yard setback of 20 feet above a height of 125 feet is required (ZR §§ 24-36, 24-382, and 24-552)); (3) a portion of the Center fronting on Sixth Street, a narrow street, would extend above 60 feet within the required setback distance with a maximum height of 132 feet and would pierce the sky exposure plane (a required front setback of 15 feet on wide streets or 20 feet on narrow streets above a height of 60 feet is required and a sky exposure plane of 5.6 to 1 on wide streets or 2.7 to 1 on narrow streets is required (ZR § 24-522)); and

WHEREAS, within the R6B district, there is: (1) a lot coverage of 89 percent (a maximum lot coverage of 60 percent for through lots is permitted (ZR § 24-11)); (2) the portions of the Center located on the through and interior lot

exceed 125 feet in height and are less than 20 feet from the rear yard line (a rear yard equivalent of 60 feet for through lot portions of a zoning lot, with a required rear yard setback of 10 feet above a height of 40 feet is required (ZR § 24-552)); (3) the portion of the Center fronting on Fifth Street would have a front wall with a height of approximately 59 feet at the street line and, beyond the required 15-foot setback, a maximum building height of approximately 141 feet is required and the street wall would align with the street walls of the adjacent rowhouses, allowing for the rowhouses' bay windows to visibly project, but would have a large opening to provide pedestrians with access to the Center's vehicular driveway area and visitor entrance (a street wall location with a minimum base height of 30 feet and maximum base height of 40 feet and a maximum building height of 50 feet are permitted (ZR §§ 24-522, 23-633)); and

WHEREAS, within the R7B district, there is (1) a lot coverage of 94.9 percent (a maximum lot coverage of 80 percent for corner lots is permitted (ZR § 24-11)); (2) a street wall location with a minimum base height of 40 feet and a maximum base height of 60 feet is permitted; and (3) a complying front wall height of approximately 60 feet on Fifth Street and Eighth Avenue and a complying 75-ft. maximum building height (a maximum building height of 75 feet is permitted (ZR §§ 24-522, 23-633)); and

WHEREAS, finally, the Center would have a total of four signs to provide wayfinding for pedestrians and vehicles: a 120-sq.-ft. sign demarcating the pedestrian and vehicular entrances on Sixth Street, two 19-sq.-ft. signs demarcating the corner pedestrian entrance at 8th Avenue and Sixth Street (one on each frontage), and a 16-sq.-ft. building directory located near the main vehicular driveway and pedestrian lobby entrance (for non-residential uses, exclusive of hospitals and related facilities [which are listed in the Zoning Resolution separately from ambulatory care facilities] signage is restricted to one identification sign with a surface area of up to 12 sq. ft. and a bulletin board with an area of up to 16 sq. ft. (ZR § 22-231) yet flags, banners, and pennants for community facilities are permitted without limitation (ZR § 22-332)); and

WHEREAS, the Hospital states that the variance is required so that it may construct a building that accommodates NYM's programmatic need to locate the Center on the NYM campus and the subject site was the only available site suitable; and

WHEREAS, further, due to the need to maintain the existing hospital buildings on the campus and the presence of a significant slope across the Development Site, the subject waivers are required to construct a building that will accommodate the Hospital's programmatic needs; and

WHEREAS, the Hospital asserts that because of its status as a non-profit teaching hospital, its programmatic needs may be considered in determining if a variance is warranted; and

WHEREAS, the Hospital states that it has a need for adequate and appropriately configured space for ambulatory care facilities, with efficient adjacencies and circulation

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pathways located on its main campus; and

WHEREAS, the Hospital asserts that the Center would satisfy this need, while no other alternative including the studied complying development (the “Complying Development”) would; and

WHEREAS, the Hospital states that the Development Site is the only site on the NYM campus that is available for new construction and that allows the Center to be located proximate to the Hospital’s existing clinical facilities due to the location of the existing buildings that will remain on the Zoning Lot and the out-parcels on Fifth Street, which significantly limit the design and configuration of the Center by giving the Development Site an irregular U-shape with narrow dimensions; and

WHEREAS, the Hospital states that these conditions, when combined with the application of the Zoning Resolution’s bulk regulations, constrain the dimensions of the Center’s footprint and floor plates; and

WHEREAS, the Hospital states that the Zoning Lot has significant sloping conditions which are reflected on the survey, which show that the Development Site slopes downward from Eighth Avenue toward Seventh Avenue, with a change in grade of approximately 11 feet as measured from a point at the corner of Sixth Street and Eighth Avenue to the midblock portion of Sixth Street; and

WHEREAS, the Hospital states that this change in grade represents slightly more than three-quarters of the height of a typical building floor and, thus, a development that spans the length of the Development Site must have a split ground-floor level, impacting floor-to-floor heights and internal circulation; and

WHEREAS, the Hospital states that the slope also results in varying values of the applicable curb level and base plane, which, in combination with applicable height and setback regulations, constrain ceiling heights in the Complying Development; and

WHEREAS, the Hospital states that because of these physical constraints and their effect on a building’s bulk and floor plate configurations, a development that complies with applicable zoning regulations creates practical difficulties in satisfying the Hospital’s programmatic needs; and

WHEREAS, as to the need of the proposed orientation of the building and for the yard and setback waivers, the Hospital states they are necessary to achieve the necessary floor plates;

WHEREAS, specifically, the Hospital states that the eastern and western wings of the Center’s U-shaped floor plates would have dimensions of approximately 95 feet by 195 feet at the lower floors, which are necessary to accommodate the surgical suite’s 12 operating rooms, at approximately 550 sq. ft. each, on the third floor, with adjacent dedicated surgical preparation rooms; and

WHEREAS, the Hospital states that the floor plate also accommodates (1) the surgical recovery rooms on the floor immediately below the surgical suite and, with slightly smaller dimensions, the associated Central Sterile Services on the floor immediately above; (2) the second floor would

also contain patient preparation and recovery facilities for special procedures, consisting of ten dedicated preparation rooms and 18 dedicated recovery rooms; and (3) the surgical suite, Central Sterile Services, and patient preparation and recovery facilities would be served by dedicated elevators to provide efficient, sterile, and controlled connections; and

WHEREAS, the Hospital represents that these adjacencies would promote efficient communication and coordination among caregivers, minimize travel distances for doctors, nurses, and patients, and minimize the duplication of support functions; and

WHEREAS, further, the Hospital states that the Center would contain a number of Institutes which are staffed by faculty and affiliated physicians such as the Institute for Cancer Care, which would contain approximately 60 infusion rooms and support space, would be accommodated on the sixth and seventh floors; and

WHEREAS, the Hospital states that the ability to locate an Institute on a single floor and proximate to other medical care facilities in the building and on the block to the south would promote comprehensive, coordinated caregiving for the Hospital’s patients; and

WHEREAS, the Hospital states that the consolidation of the Center’s program in a single building would allow for the efficient, vertical stacking of facilities, with a central elevator core that minimizes travel distances for visitors and staff; and

WHEREAS, the Hospital states that the vertical alignment of facilities would facilitate circulation among floors, including efficient connections among the Hospital’s Institutes and other medical care facilities; and

WHEREAS, the Hospital states that the operating rooms would have a direct, controlled and clean pathway to the building’s Central Sterile Services on the floor immediately above, minimizing both the risk of infection incidents and the time it takes for sterile supplies to be delivered; and

WHEREAS, as to signage, the Hospital asserts that its proposed signs satisfy its need for effective wayfinding on a campus that contains a mix of hospital and healthcare facilities with multiple entrances located on streets that slope between Seventh and Eighth Avenues, which limits the visibility of signs; and

WHEREAS, the Hospital assert that the signs for the main entrance on Sixth Street, in particular, must be of a sufficient size to be visible to approaching vehicles at appropriate distances; and

WHEREAS, the Hospital analyzed a Complying Development that would contain approximately 310,000 sq. ft. of floor area – approximately 11,000 sq. ft. more than the proposal; and

WHEREAS, the analysis reflects that in order to accommodate the proposed floor area within the permitted envelope, it would include two building segments with narrower floor plates; one segment would have a similar footprint than the proposed Center’s, but without a west

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wing, and the other segment would be constructed directly over the existing parking deck on the Zoning Lot; and

WHEREAS, the Complying Development would be eight stories tall, with two mechanical floors and a height of 150 feet; and

WHEREAS, the application of lot coverage, height and setback, rear yard and rear yard equivalent, rear yard setback, and floor area distribution regulations to the Complying Development, in combination with constraints created by the Development Site's unique physical conditions, would result in narrow floor plate configurations that limit opportunities for functional adjacencies and require the duplication of support spaces; and

WHEREAS, specifically, the dimensions of the eastern wing on Eighth Avenue would be severely constrained by lot coverage limitations applicable to corner lots in the R7B zoning district; the eastern wing would be further constrained by street wall and building height regulations which require setbacks above 60 feet and preclude development altogether above 75 feet and the building's central segment on Sixth Street would be limited in its configuration by lot coverage and rear yard regulations applicable to the interior lot portion of the Zoning Lot, with its upper floors having particularly shallow dimensions because of the application of height and setback and rear yard setback regulations; and

WHEREAS, the Hospital represents that the Complying Development's western segment would be physically separated from the rest of the building above grade in order to comply with the required rear yard equivalent and this isolated segment would have very narrow dimensions in order to comply with the required rear yard equivalent, as well as with the height and setback regulations applicable to the Zoning Lot's Fifth Street frontage; and

WHEREAS, the Hospital states that the slope of the Development Site results in significant variations in the applicable curb level and base plane, as calculated pursuant to ZR § 12-10; specifically, along Sixth Street in the R6 zoning district, the applicable curb level is 131.8 feet in the corner lot, 126.44 feet in the interior lot, and 122.62 feet in the through lot; accordingly, the elevation of the applicable maximum front wall height thus steps down from Eighth Avenue toward Seventh Avenue, which results in constrained floor-to-floor heights of 9 feet and 12 feet 11 inches for portions of the fourth floor in the Complying Development; and

WHEREAS, the Hospital asserts that low ceiling heights significantly impede the ability to program these portions of the building; and

WHEREAS, the Hospital states that the Complying Development's constrained floor plates result in an inefficient configuration for the Hospital's new ambulatory care facilities, with the building's 12 operating rooms located in separate suites on the third and fourth floors; patient preparation split between the third and fourth floors; and surgical recovery on the second floor; with preparation

and recovery functions for special procedures be located in shared space on the fourth floor; and

WHEREAS, additionally, Central Sterile Services and the materials management facilities would be located at the extreme northeast corner of the building on the third floor, far removed from the operating rooms; and materials management would be housed in the east end of this segment on the second floor, physically separate from the eastern building segment, resulting in inefficiencies in the movement of material to and from the facilities located in the eastern segment; and

WHEREAS, the Hospital identified the following operational issues associated with the Complying Development, which are incompatible with its programmatic needs: (1) doctors, nurses, and other staff would be dispersed over multiple floors, and their travel times between treatment areas would be increased, resulting in an inefficient circulation network; (2) patients would experience longer and less comfortable transfers between treatment areas; (3) additional Hospital staff would be needed to accommodate the operating rooms and support spaces on each floor; (4) certain support functions and programmatic elements required by the Department of Health would have to be duplicated on each floor, reducing the amount of space in the building available for other healthcare functions; (5) the lack of a direct connection between Central Sterile Services and the operating rooms would increase the risk of infection incidents; (6) the lengthy travel path between the materials management facilities and the operating rooms would significantly reduce efficiency and increase the risk of cross-contamination; and (7) significant program impacts to the Institute for Cancer Care and preparation and recovery suites as the Complying Development would accommodate only 20 infusion rooms with minimal support, as compared to the 60 infusion rooms in the proposed Center, and only 16 shared preparation and recovery rooms, as compared to the 10 dedicated preparation rooms and 18 dedicated recovery rooms in the proposed Center; and

WHEREAS, the Hospital states that the physical isolation of the Complying Development's western segment would create additional issues as it would be connected to the remainder of the development only by the at-grade vehicular driveway and loading area; and

WHEREAS, the Hospital states that the separation of medical care facilities in the two building segments would severely impact the efficiency of the Complying Development's circulation network and impede communication and coordination among the Hospital's caregivers; and

WHEREAS, the Hospital asserts that the western segment above the ground floor would necessarily be limited to faculty practices, as the permitted building envelope does not accommodate the floor plate dimensions that are needed for operating rooms and related facilities and could only accommodate five faculty practice suites—five, rather than

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the seven proposed would require duplication of shared spaces, such as reception and waiting; and

WHEREAS, the Hospital asserts that the separation of medical care functions in two building segments would require an additional entrance to the Complying Development on Fifth Street, encouraging curbside drop-offs, and would require additional elevator cores, with negative impacts on the building's programmatic and energy efficiencies; and

WHEREAS, the Hospital also states that the shallow floor plates of the Complying Development would result in a high ratio of façade surface area to floor area in the building and with a net-to-gross square foot ratio that is approximately 13 percent worse than that of the proposed Center; and

WHEREAS, finally, the Hospital notes that the construction of the Complying Development over the existing parking garage would necessitate major structural alterations to the garage, including the demolition and reconstruction of structural floors, columns, and footings and, in accordance with applicable codes, the introduction of seismic-resisting elements such as shear walls; and

WHEREAS, the Hospital represents that such additional work would not only represent a significant expense to the Hospital, but would also lengthen the construction period for the Complying Development and would require that the garage be closed for a 17-month period, resulting in the loss of all of the existing 518 parking spaces during that time; and

WHEREAS, the Hospital asserts that a Complying Development of two building segments with entrances on Sixth Street, Eighth Avenue, and Fifth Street, would have only one 12-sq.-ft. sign, on Sixth Street, and one 16-sq.-ft. bulletin board, in accordance with the signage regulations applicable to ambulatory care facilities and would be wholly inadequate to orient visitors to the Center and to other Hospital buildings on campus, as two of the building's frontages would be entirely unmarked and the third, on Sixth Street, would have a sign of an insufficient size to be visible to approaching vehicle drivers; and

WHEREAS, the Hospital relies on Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986), in which the Court of Appeals held that schools have a presumed beneficial effect on the community which may be rebutted only with evidence of "a significant impact on traffic congestion, property values, municipal services and the like" and that "[t]he imposition of . . . [any] requirement unrelated to the public's health, safety or welfare, is . . . beyond the scope of the municipality's police power. . ."; and

WHEREAS, the Hospital asserts that the fundamental premise of the Cornell decision is that land use authorities must afford special treatment to schools and related uses because they "singularly serve the public's welfare and morals" and because of "their presumed beneficial effect on the community." Id. at 593, 595; and

WHEREAS, the Hospital notes that the Board has viewed the programmatic needs of hospitals in the way

described in Cornell for numerous hospital applications for variances and that none of those decisions have been disturbed by the courts; and

WHEREAS, the Hospital states that the Cornell decision's principles are directly applicable in this case because NYM is a teaching hospital and an acute care member institution of the New York Presbyterian Healthcare System, and, thus, may rely upon programmatic needs in support of the subject variance application; and

WHEREAS, further, the Hospital states that the application is consistent with the Cornell decision because the requested variances would not contravene public health, safety or welfare but is compatible with the character of the surrounding neighborhood and would not result in any significant adverse environmental impacts; and

WHEREAS, the Board notes that the Opposition asserts that the Hospital may not rely on the deference afforded to educational and religious institutions by New York state courts and that, even if it could, it has not established its programmatic needs; and

WHEREAS, the Opposition cited the following specific concerns about the program: (1) the programmatic needs have not been established by verifiable data and to justify the proposed patient projections through 2018; (2) the Hospital has not submitted studies and analysis similar to those in other hospital variance applications; and (3) disagreement that the program cannot be accommodated through the Garage Alternative detailed by the Opposition; and

WHEREAS, the Board acknowledges that NYM, is an established hospital and educational institution consistent with the numerous other hospitals that have sought and obtained variances from the Board; and

WHEREAS, the Board notes that in Cornell, the Court of Appeals identified the presumed public benefit of the educational institution and it finds that NYM, whether as a teaching hospital or otherwise, shares the presumed benefit to the community and is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of its variance application, which allows it to further its mission; and

WHEREAS, further, the Board notes, as held in Cornell, an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board also notes that NYM has described with great specificity, including numerical data pertaining to historic and projected patient volumes for inpatient services, ambulatory surgical cases, and clinical Institute services, its needs and how they can be accommodated on its campus in a manner consistent with what the Board has accepted from other hospital applicants; and

WHEREAS, the Board finds that NYM has established the necessary nexus between the services to be offered in the

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Center and the spatial requirements which trigger the zoning non-compliance; and

WHEREAS, the Board notes that the Hospital has not yet submitted its application for a Certificate of Need (CON) from the New York State Department of Health and that it awaits a decision on the subject variance before it will finalize the CON application; and

WHEREAS, the Board also notes that each variance application has a unique set of circumstances and a unique program and that it does not require identical analysis or information of each institution in order to establish its programmatic needs; and

WHEREAS, the Board notes that the Opposition is not satisfied that the Garage Alternative is infeasible and raises concerns about NYM's initial response that the garage could not support such an enlargement; and

WHEREAS, the Board finds that NYM has explained how, even if construction above the garage is possible from a structural standpoint, it is severely disruptive to its program and the necessary efficiencies accommodated in the proposed building; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of NYM, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since NYM is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the Hospital asserts that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the Hospital asserts that the Center would be in keeping with the institutional uses found in the surrounding neighborhood and would be compatible with the residential uses in the area; and

WHEREAS, the Hospital asserts that as an NYM facility, it would represent an extension of an existing, prominent community facility in the area, and it would be located among a number of schools and religious institutions; and

WHEREAS, the Hospital asserts that the proposed bulk is compatible with the existing character of the neighborhood, because although the proposal requires a FAR waivers within the R6B and R7B portions of the site,

the total floor area is contemplated for the site and would comply if the R6 floor area could be distributed across the site; and

WHEREAS, the applicant notes that the Development Site's immediate context is defined by existing buildings on the NYM campus, including the 12-story Wesley House on the Zoning Lot and the complex of five- to eight-story Pavilions on the block to the south; and

WHEREAS, the Hospital notes that there are also a number of existing large, five- to seven- story buildings on Eighth Avenue and Prospect Park West, to the east of the Development Site; and

WHEREAS, the Hospital notes that the buildings across Fifth Street vary in use and character, from the tall, nearly full-lot coverage John Jay Educational Campus, which comprises a majority of the block to the west, to the four-story rowhouses farther east; and

WHEREAS, the Hospital states that the Center was designed to be sensitive to the varied building forms in the surrounding area, including along Eighth Avenue and Fifth Street, and to incorporate community input regarding the configuration of the building envelope; and

WHEREAS, the Hospital states that the building's volume is concentrated on the western portion of the Development Site, away from neighboring residences on Eighth Avenue and Fifth Street, and near existing Hospital buildings, such as the 12-story Wesley House; and

WHEREAS, further, the Hospital states that the building's western wing is principally located to the west of the rowhouses across Fifth Street and is set back 26 feet above the fourth floor to minimize its presence on the street and the portion of the building that faces the rear yards of the out-parcels on Fifth Street is set back from the property line by 10 feet at the first floor and 30 feet above so as to provide the neighboring properties with additional light and air; and

WHEREAS, in response to the Opposition's assertion that 103 units of affordable housing will be lost due to the demolition of existing building's, the Hospital responded that all of the buildings on the Development Site were acquired by the Hospital approximately 40 to 45 years ago and many of the units have been converted to office space or have remained vacant; and

WHEREAS, the Hospital states that of the remaining 67 dwelling units only 12 are rented to members of the community who are not affiliated with the Hospital; the Hospital states that it has agreed to provide replacement housing for its 12 current tenants; and

WHEREAS, as noted, in response to comments from the Board and the Community Board, the Hospital revised its initial proposal including the reduction of the maximum height of the building in the R6 district by approximately 2 feet, from 152 feet to 150 feet, so as to match the height of the Complying Development; and

WHEREAS, the Hospital also reconfigured the building massing to reduce the height and volume of the building on the eastern end of the block, along Eighth

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Avenue and adjacent to the neighboring buildings on Fifth Street, and to provide greater building setbacks in those areas so that more of the building's volume is now concentrated on the middle of the Zoning Lot, near other Hospital buildings and directly adjacent to Wesley House; and

WHEREAS, the Hospital also modified the earlier proposal which reflected an exit from the driveway on Fifth Street, so that the Center's vehicular driveway is directly accessible only from Sixth Street in response to concerns of residents that the Fifth Street exit would result in increased vehicular traffic on that street, adjacent to existing residences and the John Jay Educational Campus; and

WHEREAS, further, a number of the Center's open areas, including rooftops created by the building's setbacks, have been designed as green spaces to provide visual amenities to Hospital visitors and the surrounding neighborhood; and

WHEREAS, finally, consistent with the conditions set forth in the Community Board's recommendation, the number of parking spaces in the proposed Center was reduced from 539 to 350; as noted, this change requires a modification to the drawings approved in connection with the Board's special permit for the existing NYM garage to accommodate the required parking for the Center and is addressed by the separate amendment application for; and

WHEREAS, as to traffic, the Hospital states that the proposal is designed to minimize the effect of the building's operation on surrounding properties and vehicular traffic in the following ways: (1) the vehicular driveway in the building would contain spaces for standing vehicles so as to prevent queuing on Sixth Street; and (2) vehicles that access the driveway from Sixth Street would be able to continue along the driveway's loop and exit on Sixth Street or directly access the below-grade parking garage, which would connect to the existing parking garage on the block; and

WHEREAS, the Hospital states that its design is intended to keep vehicular circulation within the Zoning Lot so as to minimize traffic activity on adjacent streets and it also directs vehicular entries and exits to Sixth Street, adjacent to Hospital buildings and away from neighboring residences; and

WHEREAS, in response to the Opposition's concerns about existing traffic related to the Hospital, the Hospital states that the ambulance and loading facilities are existing conditions that do not have a relationship to the proposed Center, in part because they are located on a separate portion of the campus and in part because the Center will not draw any ambulance trips and will contain its own loading facility; and

WHEREAS, nonetheless, the Hospital states that it is responsive to the traffic concerns and will address them through its Traffic and Parking Management Plan developed with its traffic consultant and the New York City Department of Transportation; and

WHEREAS, the Hospital asserts that the existing operations, which are unrelated to the Center, and will not

be affected by it, should not be a factor in the analysis of the Center's appropriateness; and

WHEREAS, the Hospital states that the consolidation of outpatient facilities and clinical Institutes in the Center, relocated from other parts of the NYM campus, would allow for the inpatient facilities in the Hospital's existing buildings to be upgraded and modernized and not to increase the number of inpatient beds; and

WHEREAS, accordingly, the EAS does not forecast an increase in the travel demand generated by the Hospital's existing facilities; and

WHEREAS, finally, the Center's loading berths would be enclosed and located on an interior portion of the Zoning Lot, ensuring that both truck maneuvering and loading activities occur off street; and

WHEREAS, the Opposition raised concerns about the aesthetic impact of the Center on the surrounding area and specifically raised concerns that the proposal does not fit within the City Planning Commission's (CPC) exception given to the Hospital campus in that much of it remained within the R6 zoning district while other portions of the area were zoned R6B and R7B and are to be respected as such; and

WHEREAS, the Opposition asserts that CPC's decision to allow the Hospital to remain within the R6 zoning district is negated if the proposal extends into the R6B and R7B districts; and

WHEREAS, the Board notes that the floor area is available across the site and only raises objection due to it being shifted from the R6 zoning district and into the R6B and R7B zoning districts; and

WHEREAS, the Board notes that the R6B and R7B portions of the lot are also occupied by the NYM campus and that the Hospital has explained why it is unable to shift more of the bulk in the R6 zoning district portion of the site, but it has revised its plans to include setbacks that are compliant with or nearly compliant with R6B and R7B regulations; and

WHEREAS, the Board finds that the Center's massing and design are sensitive to the surrounding neighborhood character; and

WHEREAS, the Board accepts the Hospital's traffic studies and the logic that the proposed ambulatory care facility will not compound any ambulance traffic concerns as it will not require such vehicles; and

WHEREAS, the Board notes that the Hospital has pledged to work with the community and traffic experts to improve the existing conditions not related to the Center and to ensure those issues are not affected by the Center's activities; and

WHEREAS, the Board notes that the Hospital has made several revisions to the proposal in response to concerns and has agreed to all of the Community Board's noted conditions; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or

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development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Hospital states that the hardship was not self-created and that no development that would meet the programmatic needs of NYM could occur on the existing site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as described, the Hospital reduced the degree of certain areas of non-compliance in the R6B and R7B zoning districts and represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, however, the Opposition asserts that it is possible to satisfy NYM's programmatic need in a building which requires fewer zoning waivers and that the Hospital did not pursue lesser variance alternatives in good faith; and

WHEREAS, as noted, the Hospital made certain revisions which reduced the degree of waiver it sought including: (1) increasing the setback from Fifth Street at the sixth floor in the R7B zoning district by 21 feet so as to achieve full compliance with applicable height and setback regulations in the R7B zoning district; (2) increasing the setback from Fifth Street at the fourth floor in the R6B zoning district by 15 feet to total a depth of 20 feet from the property line; and (3) increasing the setback from Fifth Street at the fifth through seventh floors in the R6B zoning district by ten feet for a total depth of 41 feet from the property line; and

WHEREAS, the Board has reviewed the applicant's programmatic needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow NYM to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 14BSA057K, dated April 21, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit within R6, R6B, and R7B zoning districts, the construction of a new ambulatory care facility on the campus of New York Methodist Hospital that does not comply with zoning regulations for floor area, lot coverage, rear setback, rear yard, and rear yard equivalent, and signage, contrary to ZR §§ 22-321, 24-11, 24-17, 24-33, 24-36, 24-382, 24-522, 24-552, and 77-02, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 13, 2014" – twenty-eight (28) sheets; and *on further condition*:

THAT the bulk parameters of the proposed Center building will be in accordance with the approved plans and be limited to 298,350 sq. ft. of floor area for the Center (459,884 sq. ft. of floor area (3.81 FAR) across the site); a maximum wall height of 73 feet (in the R6B zoning district) and 60 feet (in the R7B zoning district); total height of 150 feet (in the R6 zoning district), 141 feet (in the R6B zoning district) and 75 feet (in the R7B zoning district); 350 new parking spaces (and 60 spaces within the existing parking garage's 480 parking spaces), and signage, setbacks and lot coverage as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the use of the Eighth Avenue and Sixth Street entrance be limited to employees, emergency egress, and Urgent Care facility use during late afternoon and evening hours;

THAT the Hospital will monitor traffic as described and implement a Traffic and Parking Management Plan;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

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326-13-BZ

CEQR #14-BSA-088Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 5225, LLC, owner.

SUBJECT – Application December 23, 2013 – Special Permit (§73-44) to reduce the required number of accessory parking space from 192 to 138 spaces for an office building (UG 6). M1-1 (CP) zoning district.

PREMISES AFFECTED – 16-16 Whitestone Expressway, West Side of Whitestone Expressway (service road), 920.47 ft. north of 20th Avenue. Block 4148, Lot 50, 65. Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 21, 2013, acting on DOB Application No. 420628057, reads:

Proposed reduction in required parking is contrary to ZR Section 44-21 and requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, on a site located within an M1-1 zoning district, within the Special College Point District, a reduction in the required number of accessory parking spaces in connection with the enlargement of an existing office building (Use Group 6) from 192 spaces to 137 spaces, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on May 20, 2014 after due notice by publication in The City Record, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, on condition that: (1) signage will be provided near each parking entrance indicating specific tenant and visitor use; (2) that the signage will be sufficient in size and placement to help cars enter the appropriate areas without confusion; and (3) that the unattended entrance to the facility will be recessed from the property line, in order to provide onsite space for queuing vehicles; and

WHEREAS, the subject site is located on the west side of the Whitestone Expressway between 14th Avenue and 20th Avenue, within an M1-1 zoning district, within the Special College Point District; and

WHEREAS, the site has approximately 300 feet of frontage along the Whitestone Expressway and 57,949 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story office building (Use Group 6) with 28,009 sq. ft. (0.53 FAR) and 99 accessory parking spaces; and

WHEREAS, pursuant to ZR § 32-15, the subject Use Group 6 office is in parking requirement category B1, which requires that one accessory parking space be provided for every 300 sq. ft. of floor area; thus, the existing Use Group 6 office floor area at the site generates 99 required accessory parking spaces; and

WHEREAS, the applicant now proposes to enlarge the building, which will result in an increase in floor area from 28,009 sq. ft. (0.53 FAR) to 57,581 sq. ft. (1.0 FAR) and an increase in the number of required accessory parking spaces from 99 parking spaces to 192 parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject M1-1 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable Zoning Resolution provision, for Use Group 6 office use in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 44-21 the total number of parking spaces that will be required in connection with the proposal is 192 spaces; thus, if the special permit is granted, only 96 parking spaces will be required; nevertheless, the applicant proposes 138 parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, as a demonstration of such good faith, the applicant represents that the majority of the building will be occupied as offices for its owner – Local 30 Operating Engineers Union; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, at hearing, the Board (1) observed that the nearest subway line was too far from the site to be reasonably included as a means of accessing the site despite statements to the contrary in the parking study, and (2) in response to the community board’s comments, requested clarification regarding the directional signage within the parking facility; and

WHEREAS, in response, the applicant explained that the analysis assumed that subway users would utilize the local bus service in conjunction with the No. 7 train in order reach the site; the applicant also submitted a statement

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describing the proposed directional signage; and

WHEREAS, based upon the above, the Board agrees that the accessory parking space needs of the site can be accommodated even with the parking reduction; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-088Q, dated December 23, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to permit, on a site located within an M1-1 zoning district, within the Special College Point District, a reduction in the required number of accessory parking spaces in connection with the enlargement of an existing office building (Use Group 6) from 192 spaces to 137 spaces, contrary to ZR § 44-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received December 23, 2013"-(6) sheets, and on further condition:

THAT there will be no change in the use of the site without prior review and approval by the Board;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within

the permitted off-street radius;

THAT signage will be provided near each parking entrance indicating specific tenant and visitor use;

THAT the signage will be sufficient in size and placement to help cars enter the appropriate areas without confusion;

THAT the unattended entrance to the facility will be recessed from the property line, in order to provide onsite space for queuing vehicles;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

211-12-BZ

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for deferred decision.

300-12-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Columbia Grammar & Preparatory School, owner.

SUBJECT – Application October 19, 2012 – Variance (§72-21) to permit an enlargement of an existing school building (*Columbia Grammar and Preparatory*), contrary to lot coverage (§24-11), permitted obstruction (§24-33), rear yard equivalent (§24-332), initial setback distance (§24-522), height (§23-692), and side yard (§24-35(b)) regulations. R7-2 zoning district.

PREMISES AFFECTED – 36 West 93rd Street aka 33 West 92nd Street, between Central Park West and Columbus Avenue, Block 1206, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to August

MINUTES

19, 2014, at 10 A.M., for continued hearing.

350-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of an 11-story community facility/residential building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

208-13-BZ

APPLICANT – Issa Khorasanchi, for Kenneth Segal, owner; Dimitriy Brailovskiy, lessee.

SUBJECT – Application July 8, 2013 – Special Permit (§73-36) to legalize the use of a physical culture establishment (*Fitness Gallery*) located on the second floor of a two story commercial building. C8-1/R4 zoning district.

PREMISES AFFECTED – 1601 Gravesend Neck Road, Gravesend Neck Road, between East 16th and East 17th Street, Block 7377, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of a physical culture establishment (*The Physique*). C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

277-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of a 12-story, 125 unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), base and building height (§23-633), and parking (§25-23). R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

283-13-BZ

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

3-14-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of a school (*Saint David's School*), contrary to lot coverage (§24-11, 24-12), floor area (§24-11), rear yard (§24-36), rear wall setback (§24-552b), base height (§24-522, 24-633), streetwall (§23-692c, 99-051b), maximum height (§99-054b), and enlargement to a non-complying building (§54-31) regulations. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of Manhattan.

COMMUNITY BOARD # 8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

57-14-BZ

APPLICANT – The Law Office of Jay Goldstein, PLLC, for One NY Plaza Co. LLC, owner; Gear Fitness LLC d/b/a Retro Fitness, lessee.

SUBJECT – Application April 10, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*) in the sub-cellar and concourse level of a 50-story commercial building. C5-5(LM) zoning district.

PREMISES AFFECTED – 1 New York Plaza, 114-142 13 Broad Street, 13 South Street, 1-21 Water Street, 49-63 & 54-64 Whitehall Street, Block 4, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

BULLETIN

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July 2, 2014

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Tuesday, June 24, 2014**

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312-13-A	521-525 West 19 th Street, Manhattan
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DOCKETS

New Case Filed Up to June 24, 2014

143-14-BZ

746 61st Street, 61st Street, between 7th and 8th Avenue, Block 5794, Lot(s) 25, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-36) to allow for the propose Physical Culture Establishment (99 Health Club Ink.) in the cellar, first and second floor of two story building in an M1-1 zoning district. M1-1 district.

144-14-BZ

1751 Park Avenue, Located on the east side of Park Avenue between East 122nd Street and East 121 Street, Block 1770, Lot(s) 72,4,3,2,1,101, Borough of **Manhattan, Community Board: 11**. Special Permit (§73-19) to request a special permit to allow for a Use Group 3 special education preschool on the second floor of the existing building, located within an M1-4 district. M1-4 district.

145-14-A

136-16 Carlton Place, Cross Streets Linden Place and Leavitt Street, Block 4960, Lot(s) 62, Borough of **Queens, Community Board: 4**. GCL 36 Waiver: Proposed four story building on Carlton Place, which is facing an unmapped street pursuant Article 3 Section 36 of the General City Law. C2-/R6 district.

146-14-BZ

285 Grand Street, Located on the south side of Grand Street approximately 25 feet west of the intersection formed by Grand Street and Eldridge Street, Block 306, Lot(s) 22, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical culture establishemnt in the cellar of an existing building. C6-1G zoning district.

147-14-BZ

4167 Ocean Avenue, East Side of Ocean Avenue between Hampton Avenue and Oriental Boulevard, Block 8748, Lot(s) 227, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of an existing single family residence located in a residential R3-1 zoning district. R3-1 district.

148-14-BZ

11 Avenue A, Located on the west side of Avenue A between East 1st Street and East 2nd Street, Block 429, Lot(s) 39, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to permit multi-family residential use at the Premises within an R8A/C2-5 zoning district R8A/C2-5 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

JULY 22, 2014, 10:00 A.M.

ZONING CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 22, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

169-93-BZ

APPLICANT – Law office of Fredrick A. Becker, for 2231 Associates LLC, owner; TSI West 80, LLC dba NY Sports Club, lessee.

SUBJECT – Application May 5, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on May 17, 2014. C4-6A/EC-3 zoning district.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

49-14-A

APPLICANT – Jesse Masyr, Esq of Fox Rothschild LLP, for Archdiocese of New York, owner.

SUBJECT – Application March 25, 2014 – Proposed the construction of an enlargement to an existing community facility contrary to General City Law Section 35. R1-1 zoning district.

PREMISES AFFECTED – 5655 Independence Street, Arlington Avenue to Palisade Avenue between West 256th Street and Sigma Place. Block 5947, Lot 120. Borough of Bronx.

COMMUNITY BOARD #8BX

153-11-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoros Parais, owner.

SUBJECT – Application September 21, 2011 – Reinstatement (§§11-411 & 11-412) to permit the continued operation of an automotive repair use (UG 16B) and an amendment to enlarge the existing one story building, an additional 120 sf; Waiver of the Board's Rules. C1-3 zoning district.

PREMISES AFFECTED – 27-11 30th Avenue, between 27th Street and 39th Street. Block 575, Lot 23. Borough of Brooklyn.

COMMUNITY BOARD #4BK

286-12-BZ

APPLICANT – Eric Palatnik, P.C., for People of Destiny Ministries International, Inc., owners.

SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit to permit for a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story Use Group 4A House of Worship (*The Church*). Variances are required to maintain its existing lawful non-conforming lot coverage ratio (§24-11) and rear yard (§24-391) and waiver the minimum parking spaces (§25-30). R6 zoning district.

PREMISES AFFECTED – 1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue, Block 1399, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #8BK

298-13-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner.

SUBJECT – Application November 1, 2013 – Special Permit (§73-49) to permit voluntary accessory parking on the rear (western) portion, to create a rooftop above the existing upper level parking area of an existing three story and cellar physical culture establishment (*Spa Castle*). M1-1 zoning district.

PREMISES AFFECTED – 11-11 131st Street, 11th Avenue between 131st and 132nd Street, Block 4011, Lot 24, Borough Queens.

COMMUNITY BOARD #1Q

133-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 175 Father Capodanno

CALENDAR

Boulevard, Block 3122, Lot 118, Borough of Staten Island.
COMMUNITY BOARD #2SI

134-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 53 Doty Avenue, Block 3124, Lot 147, Borough of Staten Island.

COMMUNITY BOARD #2SI

135-14-A

APPLICANT – Department of Housing Preservation and Development.

SUBJECT – Application June 16, 2014 – Requesting Waiver of Section 36 Article 3 of the General City Law, property is located in an unmapped street. R3-1 zoning district.

PREMISES AFFECTED – 19 Sunnymeade Village, Block 3122, Lot 174, Borough of Staten Island.

COMMUNITY BOARD #2SI

136-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 16 Mapleton Avenue, block 3799, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

137-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 174 Kiswick Street, Block 3736, Lot 21, Borough of Staten Island.

COMMUNITY BOARD #2SI

138-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 1099 Olympia Boulevard Block 3804, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #2SI

139-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 555 Lincoln Avenue, Block 3804, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, JUNE 24, 2014 10:00 A.M.

Present: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

391-80-BZ

APPLICANT – Sheldon Lobel, P.C., for The NY Community Hospital of Brooklyn, INK., owner.
SUBJECT – Application April 16, 2014 – Amendment of previously approved variance (§72-21) which permitted enlargement to an existing hospital building (*NY Community Hospital of Brooklyn*), contrary to bulk regulations. The Amendment seeks to enclose a ramp which increases the degree of lot coverage non-compliance. R7A zoning district.

PREMISES AFFECTED – 2525 Kings Highway, south side of Avenue O approximately 175 feet northeast of the intersection formed by Bedford Avenue and Kings Highway, Block 6772, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision hearing closed.

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross & Ross, owner; Bally Total Fitness of Greater NY., lessee.

SUBJECT – Application April 28, 2004 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the operation of a Physical Culture Establishment (*Bally's Total Fitness*) which expired on May 10, 2014. C1-5/R8A & R7A zoning district.

PREMISES AFFECTED – 1915 Third Avenue, southeast corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #11M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision hearing closed.

APPEALS CALENDAR

33-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Quentin Road Development LLC, owner.

SUBJECT – Application February 13, 2014 – Appeal challenging the Department of Building's determination regarded permitted community facility FAR, per §113-11 (Special Bulk Regulations for Community Facilities) C4-2 zoning district, C8-2 (OP). C4-2 (OP) zoning district.

PREMISES AFFECTED – 902 Quentin Road, Southeast corner of intersection of Quentin Road and East 9th Street. Block 6666, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination, dated January 14, 2014, by the Department of Buildings (“DOB”) (the “Final Determination”), with respect to DOB Application No. 302205940; and

WHEREAS, the Final Determination states, in pertinent part:

Demonstrate compliance with ZR 113-00 for the Special Ocean Parkway District, including but not limited to “. . . portions of the building containing community facility uses shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3 (Bulk Regulations for Residential Buildings is Residence District)”; and

WHEREAS, a public hearing was held on this appeal on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on May 20, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the appeal is filed on behalf of the property owner who contends that DOB’s denial was erroneous (the “Appellant”); and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the subject site is located at the southeast corner of the intersection of Quentin Road and East Ninth Street, partially within a C8-2 zoning district and partially within a C4-2 zoning district, within the Special Ocean Parkway District; and

WHEREAS, the site, which comprises Tax Lots 1 and 5, has approximately 131 feet of frontage along Quentin Road, 111 feet of frontage along East Ninth Street, and 13,836 sq. ft.

MINUTES

of lot area; and

WHEREAS, the Appellant states that 12,956 sq. ft. of lot area is within the C8-2 portion of the site and 880 sq. ft. of lot area (the southernmost 11'-0" by 80'-0" rectangle) is within the C4-2 portion of the site; and

WHEREAS, the site is occupied by an eight-story mixed community facility (Use Group 4) and commercial building (Use Group 6) with approximately 60,959 sq. ft. of floor area (4.4 FAR) (approximately 45,737 sq. ft. of community facility floor area (3.3 FAR) and approximately 15,222 sq. ft. of commercial floor area (1.1 FAR)) and 98 accessory parking spaces; and

PROCEDURAL HISTORY

WHEREAS, the Appellant states that on or about November 16, 2006, DOB issued an approval to construct the building under New Building Application No. 302205940 (the "Application"); the applicant states that it obtained permits to construct the building on or about August 18, 2009, and that DOB issued the first of several temporary certificates of occupancy for the building on or about November 28, 2012; and

WHEREAS, the Appellant states that during the course of construction, DOB audited the Application and determined that the proposed community facility floor area was in excess of that permitted under the Special Ocean Parkway District regulations; and

WHEREAS, specifically, the Appellant states that by determination dated October 26, 2012, DOB found that, per ZR § 113-11, the maximum permitted community facility floor area for the C4-2 portion of the site was approximately 686 sq. ft. (0.78 FAR) rather than 4,224 sq. ft. (4.8 FAR), because the C4-2 portion of the site (the 11'-0" by 80'-0" rectangle described above) was limited to the maximum permitted FAR of Article II, Chapter 3 (0.78 FAR) rather than the maximum permitted community facility FAR for a C4-2 zoning district outside the Special Ocean Parkway District (4.8 FAR); and

WHEREAS, subsequently, the Appellant obtained the Final Determination on January 14, 2014 and timely filed this appeal; and

WHEREAS, accordingly, the question on appeal is limited to the determination of the maximum permitted community facility FAR in a C4-2 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Appellant asserts that it is 4.8 FAR; DOB asserts that it is 0.78 FAR; both parties claim support for their position in the text of ZR § 113-11 and its legislative history, as well as the structure of the Zoning Resolution overall; and

WHEREAS, by letter dated June 6, 2014, the Department of City Planning ("DCP") states that it supports DOB's position with respect to ZR § 113-11; and

PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the primary Zoning Resolution provisions the Appellant and DOB cite are as follows, in pertinent part:

ZR § 23-142
In R6, R7, R8 or R9 Districts

R6 R7 R8 R9

In the districts indicated, the minimum required #open space ratio# and the maximum #floor area ratio# for any #zoning lot# shall be as set forth in the following table for #zoning lots# with the #height factor# indicated in the table.

MINIMUM REQUIRED OPEN SPACE RATIO
AND MAXIMUM FLOOR AREA RATIO
R6 through R9 Districts
In R6
Districts

For #zoning lots# with a #height factor# of	...	Max. #floor area ratio#	...
178	...
	*	*	*

ZR § 34-112

Residential Bulk Regulations in other C1 or C2 Districts or in C3, C4, C5 or C6 District C1-6 C1-7 C1-8 C1-9 C2-6 C2-7 C2-8 C3 C4 C5 C6

In the districts indicated, the applicable #bulk# regulations are the #bulk# regulations for the #Residence Districts# set forth in the following table:

Districts	Applicable #Residential District#
C3	R3-2
C4-1	R5
C4-2 C4-3 C6-1A	R6
...	...
	* * *

ZR § 113-11

Special Bulk Regulations for Community Facilities All #community facility buildings#, and portions of #buildings# containing #community facility uses#, shall be subject to the applicable underlying district #bulk# regulations of Article II, Chapter 3 (Bulk Regulations for Residential Buildings in Residence Districts), except as provided below:

- (a) in R2X Districts, the #residential bulk# regulations of an R3-1 District shall apply to #community facility buildings#;
- (b) in R6 or R7 Districts with a letter suffix, the applicable #bulk# regulations set forth in Article II, Chapter 4 (Bulk Regulations for Community Facility Buildings in Residence Districts) shall apply;
- (c) in the Subdistrict, the #bulk# regulations of Article II, Chapter 3 shall apply, except as set forth in Section 113-503 (Special bulk regulations); and
- (d) in R6 or R7 Districts without a letter suffix, the #community facility bulk# regulations of Article II, Chapter 4, may be made applicable by certification of the City Planning

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Commission, pursuant to Section 113-41 (Certification for Community Facility Uses on Certain Corner Lots); and

DISCUSSION

A. THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the Final Determination is: (1) contrary to the clear, unambiguous language of ZR § 113-11; and (2) inconsistent with the intent of the Special Ocean Parkway District; and

WHEREAS, the Appellant states that the Final Determination is contrary to the clear, unambiguous language of ZR § 113-11; and

WHEREAS, the Appellant observes that where ZR § 113-11 employs the term “underlying” ([a]ll community facility buildings, and portions of buildings containing community facility uses, shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3 . . .”) it does so in direct reference to Article II, Chapter 3; therefore, the Appellant asserts that to the extent that Article II, Chapter 3 supplies an “underlying” regulation, such regulation is applicable; and

WHEREAS, however, the Appellant states that there are no “underlying” district bulk regulations in Article II, Chapter 3 for a C4-2 district and that there are only “underlying” district bulk regulations in Article II, Chapter 3 in residence districts and commercial districts mapped within residential district (C1 and C2 districts); and

WHEREAS, the Appellant also states that ZR § 113-11 uses the term “applicable” as a modifier of “underlying,” where use of the term “underlying” would have been sufficient to direct a reader of the section to Article II, Chapter 3; instead, by also using “applicable” the drafters signaled a clear intent to exclude from the Article II, Chapter 3 bulk regulations buildings or portions thereof within districts where there was no *applicable* underlying regulation, which the Appellant states is the case here; and

WHEREAS, thus, the Appellant states that because ZR § 113-11 clearly and unambiguously requires compliance with bulk regulations applicable for a community facility building under Article II, Chapter 3, and there are no such regulations in a C4-2 zoning district, the bulk regulations generally applicable to a community facility in a C4-2 zoning district govern (ZR § 33-123) and provide for a maximum community facility FAR of 4.8 FAR within the C4-2 portion of the site; and

WHEREAS, the Appellant also notes that DOB applied the same principle—that ZR § 33-123 controls where Article II, Chapter 3 has no applicable provision—to determine that the maximum permitted community facility FAR in the C8-2 portion of the site is 4.8 FAR; and

WHEREAS, the Appellant disagrees that the applicable underlying district bulk regulations for a C4-2 district are determined by reference to ZR § 34-112; and

WHEREAS, the Appellant states that nothing in the text of ZR § 113-11 supports reference to ZR § 34-112 and that DOB arbitrarily incorporated that section’s provisions despite ZR § 113-11’s clear reference to Article II, Chapter 3; and

WHEREAS, further, the Appellant asserts that ZR § 34-112 concerns residential district equivalents to commercial districts rather than “underlying” districts, which is a term that refers to an area where a commercial district is mapped within a residence district; and

WHEREAS, the Appellant also notes that the 2011 Key Terms Amendment to the Zoning Resolution which was intended to clarify ambiguous provisions and bring the text into alignment with long-standing DOB practices and interpretations, altered ZR § 113-11 in many respects but did not alter it to include reference to ZR §34-112; as such, the Appellant asserts that DOB erroneously incorporates ZR § 34-112 in determining the requirements of ZR § 113-11; and

WHEREAS, the Appellant contends that the Final Determination is contrary to the intent of the Special Ocean Parkway District; and

WHEREAS, the Appellant states that, according to the 1976 City Planning Commission Report (the “1976 CPC Report”) regarding the creation of the Special Ocean Parkway District, the special district was created in response to community concerns over the growing number and size of community facility buildings and their impacts on residential district, primarily in terms of neighborhood character and appearance, light, air, and privacy; and

WHEREAS, the Appellant states that the 1976 CPC Report included no reference to impacts on purely commercial districts i.e., commercial district not mapped within residence districts, such as C4-2 or C8-2 districts; as such, the Appellant asserts that DOB’s interpretation of ZR § 113-11 does nothing to further the intent of the Special Ocean Parkway District; and

WHEREAS, the Appellant also notes that this particular site and block have, according to historic records, a strong history of commercial use and thus no residential character to be preserved by the Special Ocean Parkway District; and

WHEREAS, the Appellant contends that the CPC’s clear intent to limit community facility FAR in residence districts—and lack of intent to limit community facility FAR in purely commercial districts—is evidenced by ZR § 113-11(d), which allows higher community facility FARs by CPC certification on corner lots within certain R6 or R7 districts pursuant to ZR § 113-41; and

WHEREAS, the Appellant states that the certification is consistent with the intent of the Special Ocean Parkway District to slow the proliferation of oversized community facilities in areas developed with low-rise residential buildings but to allow larger community facility in denser residence districts on corner lot, where larger buildings are more appropriate; and

WHEREAS, the Appellant also asserts that there is no plausible land use rationale for allowing, albeit by certification, larger community facility buildings in an R6 zoning district (where only residences and community facilities are permitted) than in a C4-2 zoning district (where residences, community facilities, and commercial buildings are permitted), particularly where the CPC noted that the concern was the impact of large community facilities on

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residences (rather than on commercial uses or mixed-use portions of the neighborhood); and

WHEREAS, further, the Appellant states that, paradoxically, the site is in a worse position to construct a community facility because it is in C4-2 district (where ZR § 23-00 limits the maximum FAR to 0.78, which is the maximum permitted FAR for a residence in an R6-equivalent district) than it would be if it were *actually* in an R6 district, where ZR §§ 113-41 and 24-00 would permit a maximum FAR of 4.8; thus, applying the text as DOB interprets actually yields the larger community facility building in the residence district – which, the Appellant asserts, is entirely contrary to the intent of the Special Ocean Parkway District regulations; and

WHEREAS, likewise, the Appellant states that if the intent of the special district had been to limit the size of community facility buildings in commercial districts and residence districts alike, CPC's omission of C8-2 districts was both arbitrary and ineffectual, since a significantly greater portion of the Special Ocean Parkway District is zoned C8-2 (where, per DOB, the maximum community facility FAR is 4.8) than is zoned C4-2 (where, per DOB, the maximum community facility FAR is 0.78); and

WHEREAS, the Appellant also notes that general land use and zoning principles dictate that community facilities are favored uses, which should be encouraged; as such, the Appellant states that community facility FARs are almost always equal to or higher (and almost never lower) than the maximum FARs for residences and commercial uses; and

WHEREAS, accordingly, the Appellant requests that the Board grant the appeal, reverse the Final Determination, and declare that the maximum FAR for a community facility building in C4-2 district within the Special Ocean Parkway District is 4.8 FAR; and

B. DOB'S POSITION

WHEREAS, DOB contends that that the Final Determination was properly issued because it is consistent with: (1) plain text of ZR § 113-11; (2) the Zoning Resolution rules of interpretation; and (3) the intent of the Special Ocean Parkway District; and

WHEREAS, DOB states that the plain text of ZR § 113-11 supports its determination that the maximum permitted community facility FAR for the C4-2 portion of the site is 0.78 FAR; and

WHEREAS, DOB contends that ZR § 113-11 imposes the district bulk regulations of Article II, Chapter 3 on portions of the building that contain community facility uses; and

WHEREAS, DOB states that since the building is located in a commercial district, the residence district designation assigned to the commercial district—the residential district equivalent—must be used to determine the applicable residence district bulk regulations, per ZR § 34-112; thus, pursuant to ZR § 34-112, the R6 bulk regulations apply in a C4-2 district, and the maximum residential FAR in an R6 zoning district is 0.78 FAR, per ZR § 23-142; and

WHEREAS, DOB states that ZR § 113-11's use of the

phrase “applicable underlying” ([a]ll community facility buildings, and portions of buildings containing community facility uses, shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3 . . .”) signals an intent for the provision to apply wherever there is an applicable bulk regulation in Article II, Chapter 3; and

WHEREAS, DOB states that, according to the clear and unambiguous text of ZR § 34-112, R6 district bulk regulations are applicable in a C4-2 district; as such, contrary to the Appellant's assertion, there is an “applicable” residence district bulk regulation to be incorporated by ZR § 113-11 in the C4-2 district; and

WHEREAS, DOB disagrees with the Appellant that ZR § 113-11 imposes Article II, Chapter 3 bulk regulations only on buildings if they are in an “underlying” residential district (or in a commercial overlay, in which a residential district is considered the underlying district) and asserts that this interpretation is contrary to the Zoning Resolution's rules of interpretation; and

WHEREAS, DOB states that, according to the ZR § 12-02 rules for interpretation of district designations,

[w]hen no district designations are listed for a specific section, the provisions of such section shall be construed to apply to all districts under consideration in the article in which the section appears, or, if specified, only to those districts referred to directly within the section itself; and

WHEREAS, DOB notes that both C4-2 and C8-2 districts remain mapped within the Special Ocean Parkway District and thus concludes that such districts were “under consideration” as that phrase is used in ZR § 12-02; and

WHEREAS, accordingly, DOB asserts that if the drafters of the Special Ocean Parkway District regulations had intended to exclude purely commercial districts from the modification set forth in ZR § 113-11, the text would have included only residence districts within a ruled bar below the number and title of the section; and

WHEREAS, DOB observes that ZR § 113-11 contains no such district designations and, therefore, is not limited solely to residence districts but is applicable anywhere the bulk regulations of Article II, Chapter 3 are applicable, including within a C4-2 district; and

WHEREAS, DOB contrasts the applicability of the R6 bulk regulations in a C4-2 district with the absence of bulk regulations for a residence in a C8-2 district; residences are not permitted as-of-right in a C8-2 district, so ZR § 34-112 need not supply a residence district equivalent; thus, ZR § 113-11 does not modify the bulk regulations for community facilities in a C8-2 district and the general provision applicable in the C8-2 district (ZR § 33-123) governs; and

WHEREAS, DOB also notes that ZR § 113-11 includes four exceptions to the applicability of the bulk regulations of Article II, Chapter 3—the R2X district, contextual R6 and R7 districts, the Subdistrict and non-contextual R6 and R7 districts—but does not include an exception for purely commercial districts; based on this omission, DOB concludes that Article II, Chapter 3 bulk regulations apply to residence

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district and their commercial district equivalents; and

WHEREAS, DOB states that the concept of applying residential district regulations in commercial districts appears throughout the Zoning Resolution, but the text does not refer to ZR § 34-112 in every instance; and

WHEREAS, DOB notes that throughout the Zoning Resolution, reference is made to ZR § 34-11 where the bulk regulations of particular residential district equivalents are relevant: ZR §§ 13-242, 28-01, and 36-532 govern particular residential equivalents and identify ZR § 34-112; and

WHEREAS, in contrast, DOB states that where the provisions of Article II, Chapter 3 apply generally, the Zoning Resolution makes inconsistent reference to ZR § 34-112; for example, ZR § 34-221 imposes the bulk regulations of Article II, Chapter 3 on the C1 through C6 districts without reference to ZR § 34-112's listing of residential equivalents of those commercial districts, yet ZR §§ 33-123 and 34-24 apply Article II Chapter 3 broadly to commercial districts and expressly refer to ZR §§ 34-112 and 34-11, respectively; and

WHEREAS, accordingly, DOB concludes that although the Zoning Resolution makes occasional reference to ZR § 34-11 when residential district regulations apply in commercial districts for the sake of clarity, no difference in meaning can be attributed to the provisions that omit such reference; and

WHEREAS, further, DOB contends that it is understood that where special district regulations mandate use of residential district bulk regulations in special districts that include commercial districts, as ZR § 113-11 does, a reference to ZR § 34-112 is not needed because residential equivalents must be employed in order to comply with the mandate; and

WHEREAS, DOB states that for example, in the Special Bay Ridge District, ZR § 114-11 provides that for a building with community facility and residential uses, the bulk regulations of Article II, Chapter 3 apply to all portions of the building except that where certain conditions are met, the bulk regulations of Article II, Chapter 4 may be used for the community facility portion of the building; since a C4-2A district is mapped within the Special Bay Ridge District, by necessity ZR § 34-112 must be used to identify the appropriate residential district equivalent that controls bulk within that underlying commercial district; and

WHEREAS, as to the Appellant's assertion that ZR § 113-11 should have been amended by the 2011 Key Terms Amendment to include ZR § 34-112, if reference to the latter was required, DOB disagrees and notes that while the text of ZR § 113-11 was modified by the Key Terms Amendment, the substantive changes to ZR § 113-11 occurred in 1993 and 1996; further, DOB asserts that using ZR § 34-112 to identify the applicable Article II Chapter 3 regulation in commercial districts with a residential district equivalent does not conflict with the ZR § 113-11 exceptions in either their pre- or post-Key Terms Amendment form; and

WHEREAS, DOB contends that its interpretation of ZR § 113-11 is consistent with the intent of the Special Ocean Parkway District; and

WHEREAS, DOB states that, according to the 1976 CPC Report, the stated goal of the Special Ocean Parkway

District is to prevent the greater bulk allowed for community facilities from having an adverse effect on light and air, privacy and livability for adjacent *residences*; and

WHEREAS, DOB asserts that to allow the full community facility FAR in the C4-2 would not be consistent with the special district's goal of keeping schools and houses of worship in scale with adjacent housing development; and

WHEREAS, DOB notes that ZR § 113-11 does not operate to reduce community facility bulk in the C8-2 districts because residences are not allowed in such districts; therefore, there is no need to reduce the bulk of community facilities in the C8-2 where there are no residences requiring protection; and

WHEREAS, DOB also disagrees with the Appellant that it is irrational to interpret ZR § 113-11 to impose R6 bulk regulations on community facilities in a C4-2 district because ZR § 113-11(d) authorizes a CPC certification to permit an increase in FAR on certain sites within R6 and R7 districts but not in the C4-2 district even though R6 is the C4-2 residential equivalent; and

WHEREAS, rather, DOB states that the scheme alleviates the imbalance between large community facilities and other as-of-right uses in the Special Ocean Parkway District; and

WHEREAS, as noted above, DOB states that the Special Ocean Parkway District was expressly enacted to ease impacts associated with the uncontrolled increase of larger community facility buildings on the residential character and appearance of the community; however, nothing in the 1976 CPC Report suggested that commercial development in the few commercial districts of the special district was undesirable; and

WHEREAS, accordingly, DOB contends that ZR § 113-41 allows certifications only for community facilities on a corner lot and fronting on a wide street in R6 and R7 districts, and not their commercial equivalents, so as to avoid any adverse impact on commercial uses that may result from allowing new community facilities with the greater Article II, Chapter 4 bulk in those commercial districts; and

WHEREAS, finally, DOB disagrees with the Appellant's claims that the because the subject block was already developed with large commercial uses by the time the Special Ocean Parkway District was created, the regulations could not possibly function to preserve a residential neighborhood character at the site; DOB also notes that, in enforcing the Zoning Resolution, it is without authority to take into consideration a claim that the purpose of a Zoning Resolution provision is not accomplished within a particular area or that such provision has unintended consequences; and

WHEREAS, accordingly, DOB requests that the Board deny the appeal and affirm the Final Determination; and

C. DCP'S POSITION

WHEREAS, as noted above, by letter dated June 6, 2014, the DCP states that it supports DOB's position; and

WHEREAS, in pertinent part, DCP's letter provides that [t]he legislative history surrounding the adoption of the text that created the Special Ocean Parkway

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District reveals that Commission was concerned that the proliferation of community facility buildings throughout the special district, and their size, was having an overwhelming effect on the low scale residential development that generally characterized the area

The Commission's concerns regarding out-of-scale community facility buildings overwhelming the residential character of the communities surrounding Ocean Parkway is clearly reflected throughout the CPC's reports of approval to adopt the text amendments that established, and thereafter amended, the special district regulations.

* * *

DOB's determination, that, pursuant to Section 113-11 of the Zoning Resolution, the portion of a community facility building located in a C4-2 district within the Special Ocean Parkway District at [902 Quentin Road, Brooklyn] is subject to the applicable underlying district bulk regulations of Article II, Chapter 3, is consistent with the Commission's land use planning concerns surrounding the adoption of the Special Ocean Parkway District text. DOB's determination is also consistent with the plain language of Section 113-11, which clearly sets forth that all community facility buildings shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3.

In a C4-2 district, the underlying bulk regulations of Article II, Chapter 3 are made applicable to residential use within such district, pursuant to Section 34-10 (Applicability of Residence District Bulk Regulations). Accordingly, as directed by Section 113-11, notwithstanding and in lieu of the underlying bulk regulations of Article II, Chapter 4 or Article III, Chapter 3, that may be otherwise generally applicable to community facilities, all community facility building are subject to the bulk regulations of Article II, Chapter 3. (emphasis added); and

CONCLUSION

WHEREAS, the Board finds that DOB's interpretation is consistent with text of ZR § 113-11, the Zoning Resolution rules of interpretation, and the intent of the Special Ocean Parkway District; as such, the Final Determination is affirmed and the appeal is denied; and

WHEREAS, the Board agrees with DOB that the text supports its determination that pursuant to the requirements of ZR § 113-11, the maximum permitted community facility FAR for the C4-2 portion of the site is governed by Article II, Chapter 3; and

WHEREAS, the Board finds that where ZR § 113-11 provides that "[a]ll community facility buildings, and portions of buildings containing community facility uses, shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3," the plain meaning of the text is that to

the extent that Article II, Chapter 3 provide bulk regulations that are *applicable*, such regulations govern; and

WHEREAS, the Board agrees with DOB that it is appropriate to look to ZR § 34-112 to determine how to apply Article II, Chapter 3 within a C4-2 district, because ZR § 34-112 establishes the corresponding residence district regulations for a C4-2 district; and

WHEREAS, the Board finds that because residences are permitted in a C4-2 district, there are *applicable* bulk regulations in Article II, Chapter 3, which, pursuant to ZR § 113-11, limit the maximum community facility FAR to the maximum permitted in the C4-2 equivalent district (R6); and

WHEREAS, the Board rejects the Appellant's contention that ZR § 113-11 imposes Article II, Chapter 3 bulk regulations only on buildings if they are in an "underlying" residential district (or in a commercial overlay, in which a residential district is considered the underlying district) and agrees with DOB that such an interpretation is contrary to the Zoning Resolution's rules of interpretation; and

WHEREAS, further, the Board finds that, in accordance with the ZR § 12-02 rules of interpretation, the Special Ocean Parkway District regulations govern throughout the special district, including in C4-2 and C8-2 districts; as such, the community facility FAR modification set forth in ZR § 113-11 applies not only in residence districts but also in C4-2 and C8-2 districts; and

WHEREAS, the Board notes the distinction between ZR § 113-11 *applying* in these purely commercial district and *resulting in a modification*—a change in what the Zoning Resolution allows one to construct; ZR § 113-11 applies in a C8-2 district, but does not result in a modification of the community facility bulk regulations because residences are not permitted as-of-right in a C8-2 district; thus, there is no C8-2 residence district equivalent, there are no residential bulk regulations for ZR § 113-11 to incorporate, and, the general provision applicable to community facilities in the C8-2 district (ZR § 33-123) applies; and

WHEREAS, the Board also notes that ZR § 113-11 includes four exceptions to the applicability of the bulk regulations of Article II, Chapter 3—the R2X district, contextual R6 and R7 districts, the Subdistrict and non-contextual R6 and R7 districts—but does not include an exception for purely commercial districts; thus, the Board agrees with DOB that Article II, Chapter 3 bulk regulations apply to residence district and their commercial district equivalents; and

WHEREAS, the Board disagrees with the Appellant that ZR § 34-112 must be specifically incorporated into ZR § 113-11 in order for it to be considered; and

WHEREAS, the Board finds that because the Zoning Resolution makes inconsistent reference to ZR § 34-11 when residential district regulations apply in commercial districts, the absence of any reference to that provision in ZR § 113-11 was not meaningful; and

WHEREAS, rather, the Board finds that where special district regulations (including ZR § 113-11) mandate use of residential district bulk regulations in special districts that

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include commercial districts, an explicit reference to ZR § 34-112 is not needed because residential equivalents must be employed in order to comply with that mandate; and

WHEREAS, likewise, the Board disagrees with the Appellant's assertion that ZR § 113-11 should have been amended by the 2011 Key Terms Amendment or by the 1993 or 1996 amendments to the special district provisions to include ZR § 34-112, if reference to the latter was required; and

WHEREAS, the Board finds that, for the reasons detailed above, clarification on the applicability of ZR § 34-112 *vis à vis* ZR § 113-11 was and is unnecessary; thus, there was no reason to amend ZR § 113-11 to include ZR § 34-112; further, as noted above, DCP submitted a letter supporting DOB's interpretation of ZR § 113-11; in the letter, DCP states unequivocally that

DOB's determination is also consistent with the plain language of Section 113-11, which clearly sets forth that all community facility buildings shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3; and

WHEREAS, the Board also notes that the 1993 amendment, which clarified the applicability of the CPC certification in certain residence districts, did not alter the portion of the text that created the general requirement to apply Article II, Chapter 3 – that text was preserved in its 1976 version; as to the Key Terms Amendment, the Board finds that it did nothing to alter the substantive requirements of ZR § 113-11; and

WHEREAS, the Board also finds that DOB's interpretation of ZR § 113-11 furthers the intent of the Special Ocean Parkway District; and

WHEREAS, the Board has reviewed the 1976 CPC Report, and agrees with DOB that the Special Ocean Parkway District was created in response to community concerns regarding large community facilities and their potential adverse effects on residences; in pertinent part, the 1976 CPC Report states that

[t]he Special Ocean Parkway District seeks to alleviate the problems associated with the uncontrolled increase of the larger community facility building to preserve the residential character and appearance of the community.

To achieve these goals the Special Ocean Parkway District regulations provide that: all new community facility developments or enlargements will be limited to the residential bulk regulations of the underlying districts; and

WHEREAS, the Board also notes that DCP confirmed this as the purpose of the Special Ocean Parkway District in its June 6, 2014 letter; and

WHEREAS, the Board finds that ZR § 113-11 rationally accomplishes this goal by limiting the size of community facilities in districts where residences are permitted as-of-right, namely, all residence districts and C4-2 districts, while preserving the ability to develop large community facilities in a C8-2 district, where residences are not permitted as-of-right;

and

WHEREAS, as to the Appellant's assertion that it is irrational to interpret ZR § 113-11 to impose R6 bulk regulations on community facilities in a C4-2 district since ZR § 113-11(d) authorizes a CPC certification to permit an increase in FAR on certain sites within R6 and R7 districts (but not in the C4-2 district even though R6 is the C4-2 residential equivalent), the Board disagrees; while the certification has the potential to allow a greater community facility FAR in an R6 district than in a C4-2 district, the possibility of such an outcome does not change the plain meaning of the portion of ZR § 113-11 that makes Article II, Chapter 3 applicable in the C4-2 district; and

WHEREAS, the Board also finds that DOB properly disregarded the Appellant's assertions regarding the actual lack of residential development on the subject block as reason for interpreting ZR § 113-11 differently; as DOB notes, it is limited by the Charter to interpreting the text of the Zoning Resolution; therefore, whether a provision of the Zoning Resolution is ineffectual as to its objectives or, on occasion, has unintended consequences are not bases for DOB to adopt an interpretation that would be contrary to the text of such provision; similarly, the extent to which a block's zoning designation is inconsistent with its history and built character is primarily a concern for the City Planning Commission, as is whether a provision of the text sometimes produces anomalous results; and

WHEREAS, likewise, the Board observes that in reviewing a provision of the Zoning Resolution, the Board is limited to reviewing the text in light of the language it employs and its legislative history; while the Board can consider the effects of the provision—both intended and unintended—the Board cannot disregard the plain language of the text unless applying the plain language produces an absurd result; and

WHEREAS, here, the Board finds that there is nothing absurd about the result of DOB's interpretation of ZR § 113-11; it is consistent with the text and the rules of interpretation for the Zoning Resolution, and it furthers the purpose of the special district (limiting the size of community facilities in districts where residences are permitted); further, it is supported by DCP, which drafted the provision; and

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determination, dated January 14, 2014, is hereby *denied*.

Adopted by the Board of Standards and Appeals, June 24, 2014.

304-13-A

APPLICANT – Simons & Wright, for 517 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

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PREMISES AFFECTED – 517-519 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

312-13-A

APPLICANT – Simons & Wright, for Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

PREMISES AFFECTED – 521-525 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

313-13-A

APPLICANT – Simons & Wright, for 531 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

PREMISES AFFECTED – 531 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

ZONING CALENDAR

124-13-BZ

CEQR #13-BSA-132K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district
PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2013, acting on Department of Buildings Application No. 320724490, reads in pertinent part:

Proposed use is not permitted in an M1-1 zoning district as per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling with seven units (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in the *City Record*, with continued hearings on February 4, 2014, April 8, 2014 and May 20, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Grattan Street, between Porter Avenue and Knickerbocker Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Avenue, a depth of 100 feet, and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story temporary frame structure, which appears to have been used for storage but is currently vacant; and

WHEREAS, historic records, including the 1921 Belcher Hyde atlas, reflect that a three-story residential building constructed in the early 1900s occupied the site until its demolition in 1981; and

WHEREAS, the applicant notes that residential use

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became non-conforming at the site as of December 15, 1961, when the M1-1 designation took effect; and

WHEREAS, the applicant seeks a use variance to construct a four-story seven-unit multiple dwelling with 4,838 sq. ft. of floor area (1.94 FAR) in accordance with the bulk regulations applicable in an R6 district (the nearest residential district, located approximately two blocks south of the site) where 2.2 FAR is the maximum permitted FAR; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's history of residential use and adjacency to residential buildings on all sides, and across the street; (2) its small lot size of 2,500 sq. ft. and narrow lot width of 25 feet; and (3) its location on a narrow one-way street; and

WHEREAS, the applicant states that occupying the site with a conforming use would not be feasible due to the predominance of residential use, the small size, and constrained street access; and

WHEREAS, as to the history of and adjacency of residential use, the applicant notes that from the early 1900s until 1981, the site was occupied by a three-story residential building consistent with the row of such buildings adjacent to the site; and

WHEREAS, the applicant asserts that the former building was one of a series of residential apartment buildings located on the north side of Grattan Street; and

WHEREAS, the applicant asserts that since the 1981 demolition of the building, the site has either been vacant or occupied by the current vacant two-story frame structure, which was not constructed pursuant to DOB approvals as far as can be determined; and

WHEREAS, the applicant asserts that such adjacencies and absence of commercial or industrial presence in the immediate vicinity of this interior lot limits any foot or vehicular traffic to the site and renders retail use infeasible; and

WHEREAS, as to its size, the applicant asserts that almost all conforming manufacturing and commercial use on Grattan Street in the vicinity is on significantly larger lots in the range of 5,000 sq. ft. to 20,304 sq. ft.; and

WHEREAS, the applicant asserts that the floor plate is too small to accommodate loading of the amount of storage required for a conforming use; and

WHEREAS, the applicant states that development of the site with a conforming commercial or manufacturing use would be infeasible due to the small floor plates of 2,500 sq. ft.; and

WHEREAS, the applicant analyzed a complying one-story warehouse building which it concluded was not viable due to the small size and other locational constraints; and

WHEREAS, the applicant identified one similar site used for conforming use - 79 Grattan Street - with 2,500 sq. ft. of lot area, but noted that it is currently vacant, which reflects the absence of a market for smaller sites for conforming use;

and

WHEREAS, the applicant asserts that its review of DOB records reflects that there are not any similarly-sized lots in the vicinity of the site that have been developed in the past decade; and

WHEREAS, the applicant notes that a one-story warehouse was constructed on the south side of Grattan Street more recently, but that site has a width of 75 feet and a lot area of 7,500 sq. ft.; and

WHEREAS, the applicant states that the subject site is one of only four vacant lots with street frontage of less than 25 feet that is not in common ownership or used in conjunction with an adjacent lot; and

WHEREAS, the applicant also states that of the undeveloped and vacant sites on the surrounding portion of Grattan Street, the subject site is one of only two not owned in conjunction with an adjacent site; and

WHEREAS, as to the site's location, the applicant notes that it is an interior lot located on a narrow one-way street and is one of 12 vacant lots included in the study area, which is similarly situated; and

WHEREAS, the applicant notes that Grattan Street at this location is a narrow one-way street that would limit the nature of commercial vehicles that can use Grattan Street; and

WHEREAS, finally, the applicant represents that the site's narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states that based on the small lot size, a conforming development would provide a maximum floor plate of 2,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, the Board inquired about (1) whether the subject lot could be viewed separately from the adjacent lot at 97 Grattan Street, which is the subject of a separate use variance application pursuant to BSA Cal. No. 125-13-BZ; and (2) whether the subject site could be distinguished from other vacant lots; and

WHEREAS, the applicant responded that the ownership of the two lots is separate and submitted individual deeds for the two lots and stated that the 1921 Belcher Hyde atlas reflects that the lots were separate at that time and, thus, have been separate for at least 90 years; and

WHEREAS, however, the applicant notes that even if the two adjacent lots were developed as a single lot with a width of 50 feet and depth of 100 feet, the hardship on the lot would still exist; and

WHEREAS, as to the other vacant lots in the vicinity, the applicant performed an initial and then an expanded study of vacant lots within the vicinity and concluded that almost all of the other sites are either larger, have greater width and street frontage or are in common ownership with an adjacent site (or sites); and

WHEREAS, the applicant notes that out of 220 lots in the initial study area, 19 of them are vacant, which is approximately 8.5 percent; and

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WHEREAS, the applicant states that of the vacant lots, the subject site is one of only four affected by all of the factors contributing to the unique conditions creating the hardship; and

WHEREAS, the applicant enlarged the study area to include a two-block radius around the site, which represents the manufacturing-zoned districts bordered by the railroad to the north and east of the site, water to the north of the site (English Kills), and the residential districts to the south and west and includes 335 lots; and

WHEREAS, the applicant found that within the enlarged study area, there are 40 sites consisting of either individual lots or assemblages of adjacent lots under common ownership and are vacant or include vacant lots; and

WHEREAS, the applicant asserts that the subject site is one of five (1.5 percent of those within the study area) affected by all the factors contributing to the unique conditions creating hardship on the site including a lot width of 25 feet, an interior lot located on a one-way street, and a history of being used exclusively for residential purposes; and

WHEREAS, the applicant states that two vacant sites of similar size to 95 and 97 Grattan Street have both been vacant for many years – 110 Harrison Street since at least 1940 and 145 Thames since at least 1997; and

WHEREAS, based upon the above, the Board finds that there are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 5,000 sq. ft. of floor area occupied by a manufacturing use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject side of Grattan Street has historically been and is currently primarily developed with residential buildings; and

WHEREAS, specifically, the adjacent use to the west and north (rear) are three-story residential buildings similar to what is proposed and the adjacent lot to the east is vacant and the subject of a use variance application pursuant to BSA Cal. No. 125-13-BZ decided on the same date; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and across the street; and

WHEREAS, the applicant notes that the building, although four stories, lines up with the height of the adjacent three-story with basement building and complies with all R6 zoning district bulk regulations; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1921 until 1981; thus, the applicant asserts that the site—and the subject stretch of Grattan Street—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, in response to the Board's question about whether the proposal complies with light and air regulations, the applicant states that all proposed windows satisfy all light and air regulations including that they open either directly upon a street or upon a yard with a minimum dimension to the lot line of 30 feet; and

WHEREAS, specifically, the applicant notes that front apartments have windows opening directly upon Grattan Street and rear apartments open upon rear yards with distances of 46 feet to the rear lot line; and

WHEREAS, accordingly, the layout does not require light wells or courts to satisfy the light and air requirements; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the immediate character than a conforming use would be; and

WHEREAS, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-132K, dated April 25, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and

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Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling with seven units (Use Group 2), contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014" – five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,838 sq. ft. (1.94 FAR), a maximum lot coverage of 54 percent, seven dwelling units, a minimum rear yard depth of 30'-0", and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the applicant must submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP's June 23, 2014 letter, and

THAT DEP must approve the Remedial Closure Report prior to obtaining a Certificate of Occupancy.

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

125-13-BZ

CEQR #13-BSA-132K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2013, acting on Department of Buildings Application No. 320724506, reads in pertinent part:

Proposed use is not permitted in an M1-1 zoning district as per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling with seven units (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in the *City Record*, with continued hearings on February 4, 2014, April 8, 2014 and May 20, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Grattan Street, between Porter Avenue and Knickerbocker Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Avenue, a depth of 100 feet, and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story temporary frame structure, which appears to have been used for storage but is currently vacant; and

WHEREAS, historic records, including the 1921 Belcher Hyde atlas, reflect that a three-story residential building constructed in the early 1900s occupied the site until its demolition in 1981; and

WHEREAS, the applicant notes that residential use became non-conforming at the site as of December 15, 1961, when the M1-1 designation took effect; and

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WHEREAS, the applicant seeks a use variance to construct a four-story seven-unit multiple dwelling with 4,740 sq. ft. of floor area (1.9 FAR) in accordance with the bulk regulations applicable in an R6 district (the nearest residential district, located approximately two blocks south of the site) where 2.2 FAR is the maximum permitted FAR; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's history of residential use and adjacency to residential buildings on all sides, and across the street; (2) its small lot size of 2,500 sq. ft. and narrow lot width of 25 feet; and (3) its location on a narrow one-way street; and

WHEREAS, the applicant states that occupying the site with a conforming use would not be feasible due to the predominance of residential use, the small size, and constrained street access; and

WHEREAS, as to the history of and adjacency of residential use, the applicant notes that from the early 1900s until 1981, the site was occupied by a three-story residential building consistent with the row of such buildings adjacent to the site; and

WHEREAS, the applicant asserts that the former building was one of a series of residential apartment buildings located on the north side of Grattan Street; and

WHEREAS, the applicant asserts that since the 1981 demolition of the building, the site has either been vacant or occupied by the current vacant two-story frame structure, which was not constructed pursuant to DOB approvals as far as can be determined; and

WHEREAS, the applicant asserts that such adjacencies and absence of commercial or industrial presence in the immediate vicinity of this interior lot limits any foot or vehicular traffic to the site and renders retail use infeasible; and

WHEREAS, as to its size, the applicant asserts that almost all conforming manufacturing and commercial use on Grattan Street in the vicinity is on significantly larger lots in the range of 5,000 sq. ft. to 20,304 sq. ft.; and

WHEREAS, the applicant asserts that the floor plate is too small to accommodate loading or the amount of storage required for a conforming use; and

WHEREAS, the applicant states that development of the site with a conforming commercial or manufacturing use would be infeasible due to the small floor plates of 2,500 sq. ft.; and

WHEREAS, the applicant analyzed a complying one-story warehouse building which it concluded was not viable due to the small size and other locational constraints; and

WHEREAS, the applicant identified one similar site used for conforming use - 79 Grattan Street - with 2,500 sq. ft. of lot area, but noted that it is currently vacant, which reflects the absence of a market for smaller sites for conforming use; and

WHEREAS, the applicant asserts that its review of DOB

records reflects that there are not any similarly-sized lots in the vicinity of the site that have been developed in the past decade; and

WHEREAS, the applicant notes that a one-story warehouse was constructed on the south side of Grattan Street more recently, but that site has a width of 75 feet and a lot area of 7,500 sq. ft.; and

WHEREAS, the applicant states that the subject site is one of only four vacant lots with street frontage of less than 25 feet that is not in common ownership or used in conjunction with an adjacent lot; and

WHEREAS, the applicant also states that of the undeveloped and vacant sites on the surrounding portion of Grattan Street, the subject site is one of only two not owned in conjunction with an adjacent site; and

WHEREAS, as to the site's location, the applicant notes that it is an interior lot located on a narrow one-way street and is one of 12 vacant lots included in the study area, which is similarly situated; and

WHEREAS, the applicant notes that Grattan Street at this location is a narrow one-way street that would limit the nature of commercial vehicles that can use Grattan Street; and

WHEREAS, finally, the applicant represents that the site's narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states that based on the small lot size, a conforming development would provide a maximum floor plate of 2,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, the Board inquired about (1) whether the subject lot could be viewed separately from the adjacent lot at 95 Grattan Street, which is the subject of a separate use variance application pursuant to BSA Cal. No. 124-13-BZ; and (2) whether the subject site could be distinguished from other vacant lots; and

WHEREAS, the applicant responded that the ownership of the two lots is separate and submitted individual deeds for the two lots and stated that the 1921 Belcher Hyde atlas reflects that the lots were separate at that time and, thus, have been separate for at least 90 years; and

WHEREAS, however, the applicant notes that even if the two adjacent lots were developed as a single lot with a width of 50 feet and depth of 100 feet, the hardship on the lot would still exist; and

WHEREAS, as to the other vacant lots in the vicinity, the applicant performed an initial and then an expanded study of vacant lots within the vicinity and concluded that almost all of the other sites are either larger, have greater width and street frontage or are in common ownership with an adjacent site (or sites); and

WHEREAS, the applicant notes that out of 220 lots in the initial study area, 19 of them are vacant, which is approximately 8.5 percent; and

WHEREAS, the applicant states that of the vacant lots, the subject site is one of only four affected by all of the factors

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contributing to the unique conditions creating the hardship; and

WHEREAS, the applicant enlarged the study area to include a two-block radius around the site, which represents the manufacturing-zoned districts bordered by the railroad to the north and east of the site, water to the north of the site (English Kills), and the residential districts to the south and west and includes 335 lots; and

WHEREAS, the applicant found that within the enlarged study area, there are 40 sites consisting of either individual lots or assemblages of adjacent lots under common ownership and are vacant or include vacant lots; and

WHEREAS, the applicant asserts that the subject site is one of five (1.5 percent of those within the study area) affected by all the factors contributing to the unique conditions creating hardship on the site including a lot width of 25 feet, an interior lot located on a one-way street, and a history of being used exclusively for residential purposes; and

WHEREAS, the applicant states that two vacant sites of similar size to 95 and 97 Grattan Street have both been vacant for many years – 110 Harrison Street since at least 1940 and 145 Thames since at least 1997; and

WHEREAS, based upon the above, the Board finds that there are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 5,000 sq. ft. of floor area occupied by a manufacturing use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject side of Grattan Street has historically been and is currently primarily developed with residential buildings; and

WHEREAS, specifically, the adjacent use to the west and north (rear) are three-story residential buildings similar to what is proposed and the adjacent lot to the west is vacant and the subject of a use variance application pursuant to BSA Cal. No. 124-13-BZ decided on the same date; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and across the street;

and

WHEREAS, the applicant notes that the building, although four stories, lines up with the height of the adjacent three-story with basement building and complies with all R6 zoning district bulk regulations; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1921 until 1981; thus, the applicant asserts that the site—and the subject stretch of Grattan Street—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, in response to the Board's question about whether the proposal complies with light and air regulations, the applicant states that all proposed windows satisfy all light and air regulations including that they open either directly upon a street or upon a yard with a minimum dimension to the lot line of 30 feet; and

WHEREAS, specifically, the applicant notes that front apartments have windows opening directly upon Grattan Street and rear apartments open upon rear yards with distances of 46 feet to the rear lot line; and

WHEREAS, accordingly, the layout does not require light wells or courts to satisfy the light and air requirements; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the immediate character than a conforming use would be; and

WHEREAS, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-132K, dated April 25, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling with seven units (Use Group 2), contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014" – five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,740 sq. ft. (1.9 FAR), seven dwelling units, a minimum rear yard depth of 30'-0", and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the applicant must submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP's June 23, 2014 letter, and

THAT DEP must approve the Remedial Closure Report prior to obtaining a Certificate of Occupancy.

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

216-13-BZ

CEQR #14-BSA-010R

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the

mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 9, 2013, acting on Department of Buildings Application No. 520146128, reads in pertinent part:

Proposed detached two-story Eating and Drinking Establishment with roof deck, in Zoning Use Group 6, is not permitted as-of-right in R3X zoning district. (ZR 22-00)

Proposed detached two-story Eating and Drinking Establishment with an open roof deck constitutes an increase in the degree of non-conformance and non-compliance. (ZR 52-34)

Proposed separate accessory open parking lot for eight parking spaces on Block 6397/Lot 12 on the southwest corner of Barclay Avenue and Boardwalk Avenue is not permitted use in an R3X zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3X zoning district within the Special South Richmond District (SRD), construction of a one-story building occupied by a restaurant (Use Group 6), which does not conform to district use regulations, contrary to ZR §§ 22-00 and 52-34; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014 and June 10, 2014, and then to decision on June 24, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the application; and

WHEREAS, Borough President James Oddo recommends approval of the application on the condition that it is not larger in scale than the existing restaurant; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, certain members of the community provided testimony in opposition to the application, citing concerns about noise and insufficient parking; and

WHEREAS, the site is at the dead end of Barclay

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Avenue and has frontage on three streets: Barclay Avenue, Boardwalk Avenue and First Court within an R3X zoning district within the Special South Richmond District and has a total lot area of 17,029 sq. ft.; and

WHEREAS, the site is across Boardwalk Avenue from Raritan Bay; and

WHEREAS, due to the location of a mapped street within the site, the applicant has filed a companion application for a waiver of General City Law § 35, pursuant to BSA Cal. No. 217-13-A, which was decided on the same date; and

WHEREAS, the site is currently occupied by (1) a two-story commercial building formerly used for a restaurant use (Use Group 6) and (2) a one-story single-family detached home; and

WHEREAS, the applicant proposes to demolish both buildings and build the new restaurant and an accessory on-site parking lot; and

WHEREAS, the applicant also proposes to merge the four existing tax lots and zoning lots (7, 9, 12, and 18) into one zoning lot to accommodate 24 self or 43 attended parking spaces; and

WHEREAS, the applicant initially proposed to construct a building with a floor area of 10,176 sq. ft. (0.6 FAR) with restaurant use on two floors, and a height of 39'-6", which would include eight parking spaces across Barclay Avenue (Block 6354, Lot 40) and 25 parking spaces to the north of the site; and

WHEREAS, at the Board's direction, the applicant first reduced the floor area to 7,208 sq. ft. and a height of 34'-8" and eliminated the lot across Barclay Avenue from its proposal; ultimately, the applicant reduced the size of the building to one-story (with an attic) and a floor area of 4,890 sq. ft.; and

WHEREAS, the applicant states that the restaurant was established on the site in 1941 and is reflected on Certificate of Occupancy #2706; and

WHEREAS, on January 9, 1979, pursuant to BSA Cal. No. 72-78-BZ, the Board granted a variance to permit in what was then an R3-2 zoning district the enlargement of the restaurant; the 1987 Certificate of Occupancy reflects a restaurant with a one-family apartment on the first floor and another on the second floor; and

WHEREAS, the approved building allowed for two stories with 4,896 sq. ft. of floor area; and

WHEREAS, the applicant states that there is no required on-site parking for the existing restaurant however, there is an existing parking lot for approximately 20 cars; and

WHEREAS, the applicant acknowledges that it enlarged the lot area and the building subsequent to the Board's prior variance approval, without requesting an amendment; and

WHEREAS, at the Board's request, the applicant provided the following information about the site conditions: (1) the approved lot area is 10,261 sq. ft. and the existing/proposed is 17,029 sq. ft.; (2) the approved floor area is 4,896 sq. ft. (for residential and commercial), the existing is 7,457.64 sq. ft. (commercial), and the proposed is 4,890 sq. ft. (commercial); and (3) the approved site plan did not include

any parking, the existing includes 20 spaces, and the proposed is 24 unattended or 43 attended spaces; and

WHEREAS, accordingly, the applicant notes that the proposal reflects an enlarged lot area but a floor area that is consistent with the prior approval; and

WHEREAS, because the restaurant use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the enlargement of the Use Group 6 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of the site for restaurant use; (2) the storm-damaged condition of the building and location within a flood zone; and (3) the location of the site within mapped unbuilt streets; and

WHEREAS, as to the history of use and the existing building, the applicant states that the site has been occupied by restaurant use from at least 1941 to the present; and

WHEREAS, the applicant states that the restaurant was established on the site in 1941 and is reflected on Certificate of Occupancy #2706; subsequent alteration applications were filed in 1949 and 1950; and

WHEREAS, as noted, on January 9, 1979, the Board granted a variance to permit in what was then an R3-2 zoning district the enlargement of a two-story building occupied by the restaurant, pursuant to BSA Cal. No. 72-78-BZ; the 1987 Certificate of Occupancy reflects a restaurant with a one-family apartment on the first floor and another on the second floor; and

WHEREAS, the applicant represents that a restaurant has operated without interruption from 1941 until October 29, 2012 when it was damaged by Superstorm Sandy; and

WHEREAS, as to the storm damage and flooding potential for the site, the applicant cites to the Mayoral Executive Order No. 230 – Emergency Order to Suspend Zoning Provisions to Facilitate Reconstruction in Accordance with Enhanced Flood Resistant Requirements – for the City's policy that if reconstruction of an existing flood-damaged building is proposed that was substantially damaged, the building must be elevated to fully comply with the flood zone regulations in the Building Code's Appendix G; and

WHEREAS, the applicant notes that "substantially damaged" had been defined as exceeding 50 percent of the market value of the building; and

WHEREAS, the applicant asserts that the restaurant suffered damage in excess of 50 percent of the market value of the building so now must be elevated to a height which exceeds the new flood hazard elevations; and

WHEREAS, accordingly, the applicant states that it cannot simply repair the existing established restaurant building, but must elevate it, which is not possible due to its wood frame construction; and

WHEREAS, the applicant states that on October 29, 2012, when Superstorm Sandy hit the Staten Island Shoreline, the site was not deemed to be in a flood hazard zone; the flood maps at that time reflect that the seawall that borders the site's

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southeast property line as the limit of Flood Zone AE; and

WHEREAS, however, the applicant notes that on June 10, 2013, the Federal Emergency Management Agency (FEMA) revised the flood maps to include the site to be within a Zone VE with a minimum first floor elevation of 21 feet; and

WHEREAS, the applicant notes that Zone VE is subject to more stringent building requirements than other zones because it is exposed to a higher level of flood risk; and

WHEREAS, the applicant states that after calculating the Richmond Datum conversion factor, the design flood elevation is required to be 18.91 feet, which dictates a new first floor elevation of 20.41 feet; and

WHEREAS, the applicant notes that the elevation of the existing first floor is 16.41 feet, which is four feet below the required flood elevation; and

WHEREAS, the applicant notes that within Zone VE, a building subject to High Velocity Wave Action (a breaking wave with a height of three feet) is required to comply with additional construction measures, which the existing damaged building does not; and

WHEREAS, the applicant notes that specific conditions include that cellars are not permitted, the first floor elevation must be above the minimum Flood Hazard Elevation, and two additional feet of freeboard must be added to the minimum first floor elevation; and

WHEREAS, the applicant notes that premium construction costs are associated with constructing a building in a Zone VE and in compliance with the Building Code's Appendix G which mandates that new buildings be on concrete or wood piles that are elevated above natural existing grade and that the piling system and its connection to the first floor living space must be designed to withstand wave velocity; and

WHEREAS, the applicant notes that the City, State, and Federal government have instituted financial programs to aid homeowners rebuild after Superstorm Sandy, but there are no such programs available to rebuild commercial businesses; and

WHEREAS, the applicant states that the portion of the site (Block 6396, Lots 7, 9, and 18) currently used for accessory parking for the restaurant is one of the few vacant parcels in the area and any new construction there would have to follow FEMA regulations; and

WHEREAS, thus the proposed parking use is more feasible than new construction which must comply with FEMA regulations that prohibit cellars and must be elevated above the flood plain on concrete piles; and

WHEREAS, the applicant asserts that residential construction in full compliance with all flood-related regulations would be subject to significant construction premiums yet would be less marketable due to the absence of a cellar which is typical in the area; and

WHEREAS, as to the presence of the mapped unbuilt streets on the site, the applicant states that Barclay Avenue is a final mapped street with a width of 70 feet; Boardwalk Avenue is a final mapped street owned by the City, with a width of 20 feet and a widening line mapped to 60 feet within

the site; and First Court is an un-built mapped street; and

WHEREAS, the applicant notes that the widening line with a width of 40 feet on Boardwalk Avenue is owned by the applicant and that the portion of the zoning lot within the widening line is 4,014 sq. ft., or 24 percent of the site which requires waiver from the Board to allow construction; and

WHEREAS, further, the applicant notes that First Court is not open or improved and, thus, access to the site is constrained on that frontage; and

WHEREAS, the applicant notes that within the subject R3-X (SRD) zoning district, construction is limited to one- or two-family detached homes on zoning lots with at least 3,800 sq. ft. of lot area and, thus, this zoning lot would allow four buildable lots with two-family homes but, due to the presence of the widening line, only three buildable lots can be realized instead of four; and

WHEREAS, further, the applicant states that, due to the odd shape of the lot, development is limited to three two-family homes and one one-family home rather than four two-family homes; and

WHEREAS, the applicant asserts that the presence of the widening lot is a unique condition in the area; and

WHEREAS, the applicant further asserts that because Lots 7, 9, and 18 create a partial through lot with a truncated L-shape with the short dimension of 50 feet, when a front yard of 18 feet and a rear yard of 20 feet is included, only two feet of depth remains, rendering the lot unbuildable; and

WHEREAS, the applicant asserts that the truncated part of the L shape is unbuildable due to the narrow depth; and

WHEREAS, the applicant asserts that a lawfully pre-existing commercial building located in a residential zoning district with the encroachment of a 40-ft. widening line depth is a unique physical condition that is not shared by other sites in the area; and

WHEREAS, finally, the applicant asserts that the existing building does not meet City requirements for flood resiliency thereby creating a practical difficulty in bringing it up to current flood hazard standards; and

WHEREAS, based upon the above, the Board finds that the history of the site, and the inability to reconstruct the existing building due to new flood regulations are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board is not persuaded that the presence of the mapped unbuilt streets creates hardship since the Board has waived that restriction under the companion application; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) three detached two-family homes and one detached one-family home; (2) three detached two-family homes and one detached one-family home built outside of the widening line; and (3) the proposal; and

WHEREAS, the study concluded that based on the premium costs associated with the new flood resistant construction regulations and the subsurface conditions, the conforming alternatives are infeasible and only the proposal

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would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant asserts that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that restaurant use has occupied the site since at least 1941, more than 20 years before the Zoning Resolution was adopted, and has existed continuously since that time; and

WHEREAS, accordingly, the applicant notes that the restaurant is an established use in the area; and

WHEREAS, the applicant states that Puglia by the Sea restaurant was originally known as Carmen's restaurant when it was established in 1941 in a business use district, which was rezoned to R3-2 in 1961; and

WHEREAS, additionally, the applicant notes that in 1979, the Board approved the enlargement of the historic restaurant to a size that is identical to the current proposal but which represents a lower FAR due to the enlargement of the zoning lot; and

WHEREAS, the applicant notes that, although the parking was not part of the 1979 approval, it has been a compatible and appropriate addition to the site if permitted to confirm; and

WHEREAS, the applicant asserts that the parking lot will help address concerns about traffic and insufficient parking in the area; and

WHEREAS, the applicant notes that the neighborhood is now occupied by large single-family detached homes and other forms of single-family homes included those converted from seasonal to year round bungalows; and

WHEREAS, the applicant notes that during the early 1900s through the 1960s, there were very few homes in the area and most of them were seasonal bungalows; and

WHEREAS, the applicant states that after 1961, construction of homes began to occur in the surrounding area with the restaurant as the only commercial use in the immediate vicinity; and

WHEREAS, the applicant notes that the site is separated from residential uses by the width of Barclay Avenue and First Court and only directly abuts residential use on one side and that is where the new parking lot with screening will be located after the demolition of the existing bungalow; and

WHEREAS, the applicant states that the demolition of the one-story bungalow in the middle of the existing parking lot will allow for 24 off-street self-parking spaces or 41 attended spaces, as necessary; and

WHEREAS, the applicant states that the parking lot will include planting islands, buffer planting areas around the perimeter of the parking lot and parking lot trees as well as

new curbs and sidewalks along the Barclay Avenue frontage; and

WHEREAS, the applicant asserts that the proposed inclusion of the additional lots to allow for parking will increase the compatibility of the non-conforming use on the surrounding neighborhood, without enlarging or extending the actual use; and

WHEREAS, the applicant notes that the building will actually be reduced from its current size and will accommodate approximately 187 patrons; and

WHEREAS, as noted, the new building will also comply with all current flood-related construction requirements in contrast to the existing frame construction which would be vulnerable to future damage; and

WHEREAS, as to bulk, the applicant notes that the building at a height of 31'-4" and with 4,890 sq. ft. of floor area (0.28 FAR) is well within the underlying bulk regulations for a conforming use; and

WHEREAS, the applicant proposes hours of operation that are consistent with its current hours; and

WHEREAS, specifically, the applicant proposes the following hours of operation for the indoor restaurant: Monday through Thursday, 12:00 p.m. to 11:00 p.m.; Friday and Saturday, 12:00 p.m. to 2:00 a.m.; and Sunday, 10:00 a.m. to 11:00 p.m.; and

WHEREAS, the applicant proposes the following hours of operation for the outdoor seating area, seasonally: Monday through Thursday, 12:00 p.m. to 11:00 p.m.; Friday and Saturday, 12:00 p.m. to 12:00 a.m.; and Sunday, 10:00 a.m. to 11:00 p.m.; and

WHEREAS the applicant submitted a copy of its revocable license agreement with the City to allow for the outdoor café use along Boardwalk Avenue, which is renewable annually; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's historic use and conditions; and

WHEREAS, the Board notes that the revised proposal reduced the initial proposal by more than half and is consistent with the 1979 Board variance for restaurant use and, thus, finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, 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 Unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-010R dated November 18, 2013; and

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WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R3X zoning district within the Special South Richmond District (SRD), construction of a one-story building occupied by a restaurant (Use Group 6), which does not conform to district use regulations, contrary to ZR §§ 22-00 and 52-34; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014" – six (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged building: a total floor area of 4,890 sq. ft. (0.28 FAR); a total height of 31'-4", and a minimum of 24 unattended parking spaces or 41 attended spaces, as illustrated on the Board-approved plans;

THAT the hours of operation will be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m.; Friday and Saturday, 9:00 a.m. to 6:00 p.m.; and Sunday, 11:00 a.m. to 6:00 p.m.;

THAT attended parking is required on Fridays and Saturdays;

THAT signage on the site will comply with C1 district regulations, as reflected on the BSA-approved plans;

THAT all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans;

THAT the parking layout be as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June

24, 2014.

217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4
Negative:.....0
Absent: Vice Chair Collins.....1

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 19, 2013, acting on DOB Application No. 520146128, reads in pertinent part:

Proposed new Building construction is located within the bed of a mapped street is contrary to Section 35 of the General City Law.; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014, and June 10, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley- Brown; and

WHEREAS, this is an application to allow the reconstruction of an existing restaurant which will be located partially in the bed of Boardwalk Avenue, a mapped street; and

WHEREAS, this application is a companion application, pursuant to BSA Cal. No. 216-13-BZ for a variance allow the reconstruction of the restaurant at the site; and

WHEREAS, the subject site lies at the west side of Barclay Avenue, north of the corner of Boardwalk Avenue, within an R3X (SRD) zoning district; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the application; and

WHEREAS, by letter dated January 15, 2014, the Fire Department states that it has reviewed the proposal and offers no objections provided the reconstruction conforms with the current NYC Fire and Building Department codes; and

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WHEREAS, by letter dated August 22, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there are no existing sewers or water mains in the Boardwalk Avenue between Ryan Place And First Court; and (2) Amended Drainage Plan No. D-111(S2) Sheet 1of 1, dated April 2, 2012, for the above-referenced location, calls for a future a 10-inch diameter sanitary sewer, and a 15-inch diameter storm sewer in the bed of Boardwalk Avenue between Ryan Place and First Court; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the width of the mapped street portion of Boardwalk Avenue and the width of the widening portion of the street at the above location; (2) a 32-foot wide sewer corridor in the bed of Boardwalk Avenue along the proposed development for the installation, maintenance and/or reconstruction of the future 10-inch diameter sanitary sewer and the 15-inch diameter storm sewer; (3) the location of the hydrant on tentative Lot 7 and the distance from the hydrant to the lot line; and (4) to clarify if Lots 40 and 42, which show parking are included as part of the application; and

WHEREAS, in response to DEP’s request, by letter dated May 20, 2013, the applicant submitted a survey for Block 6397, Lots 7, 9, 12, and 18, which shows a 60-foot width of the mapped Boardwalk Avenue and a 20-foot wide traveled portion of the street in front of the Tentative Lot 7; the existing footprint of the building on the lot line abutting the traveled portion; and noted that the 20-foot wide record street will be available for the installation and/or reconstruction of the future 10-inch diameter sanitary sewer and the 15-inch diameter storm sewer; and

WHEREAS, the applicant also submitted a survey dated December 4, 2013 for the Block 6354, Lots 40 and 42 which reflects a 60-foot width of the mapped Boardwalk Avenue and 20-foot wide traveled portion of the street and the survey shows the 12-foot wide sewer corridor inside of the Lots 40 and 42 along the southerly lot line for a width of 32 feet width, which will be available for the installation and/or reconstruction of the future 10-inch diameter sanitary sewer and the 15-inch diameter storm sewer at the above referenced location; and

WHEREAS, DEP has no further objections; and

WHEREAS, by correspondence dated September 6, 2013, the Department of Transportation (“DOT”) states that it has reviewed the project and has no objections; and

WHEREAS, DOT notes that according to the Staten Island Borough President’s Topographical Bureau: (1) Boardwalk Avenue from Second Court to Barclay Avenue has a record width of 20 feet and is mapped at a 60-foot width, and (2) the City does not have title to Boardwalk Avenue; and

WHEREAS, DOT also notes that the improvement of Boardwalk is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the

decision of the DOB, dated July 19, 2013, acting on DOB Application No. 520146128 by the power vested in it by Section 35 of the General City Law, limited to the decision noted above, *on condition* that construction will substantially conform to the drawing filed with the application marked “Received June 23, 2014” – six (6) sheets; and *on further condition*:

THAT DOB will review and approve plans associated with the Board’s approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on June 24, 2014.

279-13-BZ

CEQR #14-BSA-049M

APPLICANT – Warshaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar, first through third floors of a new building to be constructed. C6-4M and M1-6 zoning districts.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150’ West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 14, 2014, acting on DOB Application No. 121092744, reads, in pertinent part:

Proposed physical culture establishment located on zoning lot in C6-4 and M1-6 zoning districts is not permitted as-of-right pursuant to ZR Sections 32-10 and 42-10; and

WHEREAS, this is an application under ZR §§ 73-36

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and 73-03, to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, and first through third stories of a proposed 38-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is a through lot with frontage on West 34th Street and West 35th Street, between Seventh Avenue and Eighth Avenue, partially within a C6-4M zoning district and partially within an M1-6 zoning district within the Special Garment Center District; and

WHEREAS, the applicant confirmed that there are not any restrictions against the use within the subject M1-6 zoning district within the Special Garment Center District; and

WHEREAS, a 38-story commercial building is being constructed on the site and will have a total of 184,495 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy portions of the cellar, and first through third floors; the remainder of the cellar and first floor will be occupied by Use Group 10 retail; and

WHEREAS, the PCE will occupy 14,542 sq. ft. of floor area and will have its main entrance on West 35th Street within the M1-6 zoning district portion of the site; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is

outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA049M dated October 2, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73- to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, and first through third stories of a proposed 38-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 30, 2014” – Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

284-13-BZ

CEQR #14-BSA-054Q

APPLICANT – Warshaw Burstein, LLP, for 168-42 Jamaica LLC, owner; 168 Jamaica Avenue Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and the first floor of the building. R6-A/C2-4 (Downtown Jamaica) zoning district.

PREMISES AFFECTED – 168-42 Jamaica Avenue, south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot 22, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 4, 2013, acting on DOB Application No. 420048629, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C2-4 zoning district per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-4(R6A) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 10, 2104 and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens,

recommends approval of the application; and

WHEREAS, the subject site is on the south side of Jamaica Avenue between 168th Place and 170th Street, partially within a C2-4(R6A) zoning district and partially within an R5 zoning district; and

WHEREAS, a one-story commercial building is being constructed on the site and will have a total of 47,309 sq. ft. of floor area entirely within the C2-4(R6A) zoning district; and

WHEREAS, the proposed PCE will occupy portions of the cellar, and first floor; and

WHEREAS, the PCE will occupy 24,698 sq. ft. of floor area and will have its main entrance on Jamaica Avenue within the C2-4(R6A) zoning district portion of the site; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA054Q dated October 9, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and

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Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially within a C2-4(R6A) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 27, 2014” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one-story residential home, contrary to front yard (§23-45); side yard (§23-161); floor area and lot coverage (§23-141) and off street parking requirements (§25-621(B)). R4 zoning district. PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 16, 2013, acting on DOB Application No. 320718309, reads in pertinent part:

ZR 23-45 – proposed front yard is less than required minimum;

ZR 23-461 – proposed side yard is less than required minimum;

ZR 23-141 – proposed floor area is greater than maximum (permitted), proposed FAR is greater than maximum (permitted), proposed lot coverage is greater than required maximum; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, front yard, and side yards, contrary to ZR §§ 23-141, 23-45, and 23-461; and

WHEREAS, a public hearing was held on this application April 1, 2014, after due notice by publication in *The City Record*, with continued hearings on May 6, 2014, and June 10, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Voorhies Avenue and East 29th Street, within an R4 zoning district; and

WHEREAS, the site has 18 feet of frontage along Voorhies Avenue, 100 feet of frontage along East 29th Street, and 1,800 sq. ft. of lot area; the applicant notes that East 29th Street dead-ends near the southern boundary of the site, forming a cul-de-sac; and

WHEREAS, the site is occupied by a one-story, single-family home with 708 sq. ft. of floor area (0.40 FAR); and

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WHEREAS, the applicant proposes to vertically and horizontally enlarge the home contrary to the FAR, lot coverage, front yard, and side yards, and increase the floor area from 708 sq. ft. (0.4 FAR) to 1,980 sq. ft. (1.1 FAR) (the maximum permitted floor area is 1,350 sq. ft. (0.75 FAR); and

WHEREAS, the applicant states that the proposed enlargement will: (1) increase in lot coverage from 39.5 percent to 60 percent (a maximum lot coverage of 45 percent is permitted); (2) provide one front yard with a depth of 36'-2½" along Voorhies Road (two front yards with a minimum depth of 10'-0" are required, one along Voorhies Road and one along East 29th Street); and (3) maintain the existing non-complying side yard depth of 3'-9½" along the southern boundary of the site (two side yards—one along the eastern boundary and one along the southern boundary—are required with minimum depths of 5'-0"); and

WHEREAS, the applicant notes that, initially, it also sought a waiver for a parking space contrary to ZR § 25-621; however, in response to the Board's concerns, the parking space was excluded from the proposal; and

WHEREAS, accordingly, the applicant seeks a variance to permit the proposed FAR, lot coverage, and front and side yard non-compliances pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations: (1) the site's narrow width in combination with its location on a corner; (2) the location of the existing building on the site; and (3) the underdevelopment of the site; and

WHEREAS, the applicant states that the site's narrow width (18'-0") and location on a corner combined, make complying development of the site infeasible; and

WHEREAS, the applicant notes that because the site is on a corner, it must provide yards for the full length and width of the site; as such, the maximum width of a home on a narrow lot within an R4 district is 3'-0"; and

WHEREAS, the applicant represents that the yard requirements alone result in a home that is not even wide enough for one habitable room under the building code; thus, as-of-right, the site cannot be used to construct a dwelling, absent some relief from the Board; and

WHEREAS, as to the uniqueness of this practical difficulty, the applicant identified 13 sites located on corners within the subject R4 district and concluded the subject site is the narrowest, with the other sites ranging in width from 19'-0" to 60'-0"; and

WHEREAS, the applicant states that the location of the existing home at the site also produces unique practical difficulties in further developing the site; and

WHEREAS, the applicant states that the existing home's walls are contiguous with the southern, western, and eastern boundaries of the site, resulting in a front yard depth along Voorhies Avenue of 56'-8½"; as such, and given the R4 yard regulations described above, the home could be enlarged by a maximum of 176 sq. ft.; none of which would be habitable or

even practically useful for storage space, because its maximum width would be 2'-0"; similarly, it is not feasible to maintain the existing 708 sq. ft. home as-is, because the applicant represents that it is too small to marketable as a single-family home in this neighborhood; and

WHEREAS, finally, the applicant asserts that the site is significantly underdeveloped (the existing FAR is 0.4; the maximum FAR is 0.75) as compared to sites with similar lot areas in the surrounding neighborhood; and

WHEREAS, in support of this assertion, the applicant submitted a study of the 83 sites within 400 feet of the site; based on the study, the average FAR is 1.63; the applicant notes that four particularly large buildings on average-sized sites are skewing the average; however, when the outliers are removed (along with one parking lot and one vacant site), the average floor area is 2,184 sq. ft. (0.96 FAR); when only single-family homes are considered, there are 47 sites, with an average floor area of 1,914 sq. ft. (0.86 FAR), which the applicant notes is more than twice the existing 0.4 FAR at the subject site; and

WHEREAS, the applicant explored the feasibility of an as-of-right enlargement of the home; however, as noted above, such an enlargement results in an additional 176 sq. ft. of virtually unusable floor area; and

WHEREAS, based upon the above, the Board finds that, pursuant to ZR § 72-21(a), the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board agrees that because of the site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by low-density, attached, detached or semi-detached, two- or three-story homes, with varying rear and side yard depths, and, typically, shallower front yard depths than are provided at the site; as to floor area, as noted above, the proposed floor area of 1,980 sq. ft. is well within the average size of homes in the vicinity; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant also notes that the proposal will maintain the historic yard non-compliances, which, along with the site's location adjacent to the East 29th Street cul-de-sac, mitigates the impact of such non-compliances upon the surrounding neighborhood; and

WHEREAS, as to adjacent uses, the applicant states that there is a single-family home directly east of the site, a single-family home west of the site across the East 29th Street cul-de-sac, a six-story multiple dwelling directly south of the site, and north across Voorhies Avenue, P.S. 52 (Sheepshead Bay Elementary School); and

WHEREAS, the applicant states that since the enlargement vertically extends three of the existing four walls,

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the impact of the home upon adjacent uses is minimal; where the building will expand horizontally and vertically, it will be nearer to the existing home directly east of the site; however, in a typical situation, both homes would occupy the portion of the lot nearest the street frontage they share; here, the home on the site will have a front yard depth of 36'-2½" and be pulled towards the rear of the site and the adjacent home will have a rear yard depth in excess of 40'-0" and a front yard depth of approximately 10'-0"; thus, the minor decrease in the distance between these buildings is mitigated by the fact that they are still significantly more separated than most adjacent homes in the surrounding neighborhood; and

WHEREAS, at hearing, the Board directed the applicant to: (1) submit clearer photographs showing the surrounding area; (2) revise its land use studies to justify its FAR waiver; (3) examine the feasibility of reducing the size of the enlargement; and (4) amend its plans to include a note that the porch will be as approved by DOB; and

WHEREAS, in response, the applicant provided clearer photographs and submitted revised land use studies and amended plans as directed; and

WHEREAS, as to the feasibility of reducing the size of the enlargement, the applicant submitted plans showing that any reduction in the size of the enlargement will result in the loss of an entire bedroom, which it represents makes the entire proposal infeasible for the owner; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant asserts that the above-noted hardships were not created by the owner but are inherent in the site's narrowness and existing, underdeveloped building; and

WHEREAS, the Board also finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique conditions at the site, per ZR § 72-21(d); and

WHEREAS, the applicant asserts and the Board finds that this proposal is the minimum necessary to afford the owner relief, ZR § 72-21(e); and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), lot coverage, front yard, and side yards, contrary to ZR §§ 23-141, 23-45, and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014"- (8) sheets; and *on further*

condition:

THAT the parameters of the proposed building will be limited to: two stories and an attic, a maximum floor area of 1,980 sq. ft. (1.1 FAR), a front yard along Voorhies Avenue with a minimum depth of 36'-2½", and a maximum lot coverage of 60 percent, per the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT significant construction will proceed in accordance with ZR §72-23; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 14, 2013, acting on DOB Application No. 220150869, reads in pertinent part:

Proposed college, UG 3A, within the M1-1 district portion of the zoning lot is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site partially within a C4-4 zoning district and partially within an M1-1 zoning district, the construction of a two-story mixed commercial (Use Group 6) and community facility (Use Group 3) building, contrary to the use regulations set forth in ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in *The City Record*, with continued hearings on May 6,

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2014, May 20, 2014, and June 10, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Bronx, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of Metropolitan College of New York ("MCNY"), a non-profit educational institution, which will occupy the proposed building; and

WHEREAS, the subject site is triangular lot located on the northwest corner of the intersection of East 149th Street and Brook Avenue, partially within a C4-4 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the site has approximately 291 feet of frontage along East 149th Street, approximately 319 feet of frontage along Brook Avenue, and 67,881 sq. ft. of lot area; and

WHEREAS, the site's triangular shaped is thus formed by the intersection of East 149th Street and Brook Avenue, and the diagonal site boundary connecting these streets (the hypotenuse of the triangle), which abuts an MTA right-of-way where railroad tracks for the 2 and 5 subway lines emerge from underground; and

WHEREAS, the applicant notes that the C4-4/M1-1 district boundary runs roughly parallel to East 149th Street and divides a small portion of the northeast corner of the site; thus, 12 percent of the lot area (8,358 sq. ft.) is within the M1-1 portion of the site and 88 percent of the lot area (59,523 sq. ft.) is within the C4-4 portion of the site; and

WHEREAS, the applicant states that the site is currently used as a parking lot for motor vehicles; and

WHEREAS, the applicant proposes to construct a two-story mixed commercial and community facility building with 85,220 sq. ft. of floor area (1.4 FAR), including 61,697 sq. ft. of commercial floor area (Use Group 6) and 23,523 sq. ft. of community facility floor area (Use Group 3); and

WHEREAS, in addition, the applicant notes that, on June 18, 2013, under BSA Cal. No. 73-13-BZ, the Board granted a special permit pursuant to ZR § 73-49 to permit accessory parking for 87 automobiles on the rooftop of the proposed building; and

WHEREAS, the applicant states that the majority of the first story of the building and a portion of the second story will be occupied by a supermarket, a restaurant, retail space, and offices; MCNY will occupy a small portion of the first story (2,528 sq. ft.) and the remainder of the second story (22,715 sq. ft. of floor area), including a 808 sq.-ft. portion within the M1-1 portion of the site; and

WHEREAS, the applicant states that MCNY will use a small portion of the first story as an entrance lobby with administrative offices, and the second story to accommodate classroom space for up to 410 students and assembly space for up to 590 students, with a total simultaneous maximum occupancy of 927 persons; the space will include folding

walls to allow flexibility in classroom size and configuration, which will enable MCNY to host guest speakers and hold conferences, internship fairs, and job fairs; the second story will also include three computer classrooms, 17 regular classrooms, one media lab, and student and faculty lounges; and

WHEREAS, because Use Group 3 is not permitted as-of-right in an M1-1 district, the applicant seeks a use variance for the 808 sq.-ft. portion of the building on the second story; and

WHEREAS, the applicant states that the triangular shape of the site and the location of the district boundary line are a unique physical conditions, which create practical difficulties and unnecessary hardships in developing the site in conformance with underlying zoning regulations in manner that satisfies MCNY's programmatic needs as an educational institution; and

WHEREAS, the applicant states, as noted above, that the site triangular in shape due to the MTA right-of-way that forms the northwest boundary of the site; and

WHEREAS, as such, the applicant asserts that, a triangular building is the most efficient design to develop the site; and

WHEREAS, in addition, as described above, the location of the district boundary between the C4-4 portion of the site and the M1-1 portion of the site serves to isolate a small portion of the site and, thus, the building, in the M1-1 district; and

WHEREAS, nevertheless, the applicant states that MCNY requires use of the portion of the building within the M1-1 district in order to satisfy its programmatic needs; and

WHEREAS, in particular, the applicant represents that in order for the second story to have complying egress under the Building Code for the number of occupants MCNY proposes (more than 499 students), it must have three means of egress with a maximum travel distance of 250'-0" or less, and locate one of the means of egress within the M1-1 portion of the building; and

WHEREAS, the applicant examined the following as-of-right scenarios, in which MCNY did not use the M1-1 portion of the building: (1) removing the third means of egress entirely, which reduces the simultaneous classroom occupancy from 410 students to 263, prevents the usage of assembly space by more than 499 students when the classrooms are not in use and usage of the assembly space at all when classrooms are in use, and eliminates seven classrooms; (2) placing all three means of egress within the C4-4 portion of the building, which reduces the simultaneous classroom occupancy to 360 students, renders the M1-1 portion of the second story unusable, due to its lack of ADA accessibility and second means of egress, and results in a loss of three classrooms and eight computer terminals within the media lab; and (3) aligning the second-story MCNY space with the East 149th Street side of the building; and

WHEREAS, the applicant states that this third scenario carries the most disadvantages, in addition to being impractical since MCNY does not hold a lease for this portion

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of the building; first, this scenario will allow for only two means of egress, which reduces the simultaneous classroom occupancy from 410 students to 263, and prevents the usage of assembly space by more than 499 students when the classrooms are not in use and usage of the assembly space at all when classrooms are in use; second, this portion of the building is not suitable for classroom space due to the shortage of windows and the practical difficulties created by constructing classroom space along an curving building wall (rectangular floorplates are preferable for classroom layouts); third, using this portion of the building will result in the creation of two unusable areas (a total of 17,269 sq. ft. of floor area) of the second story due to a lack of ADA accessibility; and

WHEREAS, thus, the applicant states that none of the as-of-right scenarios enables MCNY to fulfill its programmatic needs to allow sufficient space for its students, faculty, and staff; and

WHEREAS, the Board acknowledges that MCNY, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that, consistent with ZR § 72-21(a), the triangular shape of the site and location of the C4-4/M1-1 district boundary, when considered in conjunction with the programmatic needs of MCNY, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since MCNY is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed use of 808 sq. ft. of floor area in the M1-1 portion of the site by MCNY will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by its diversity; and includes industrial and commercial uses, such as the nearby regional retail and business district known as "The Hub", multiple dwellings, and large community facilities; thus, the introduction of MCNY will complement the neighborhood varied character; and

WHEREAS, likewise, the applicant asserts that the placement of 808 sq. ft. of community facility floor area within the M1-1 district will be compatible with the nearest

conforming use, which is the large community facility across Brook Avenue; the applicant also notes that the majority of nearby land within the subject M1-1 district is either occupied by the railroad or undeveloped; and

WHEREAS, the applicant notes that the proposal has garnered the support of numerous elected officials and community groups, including the community board and the Bronx Overall Economic Development Corporation, and is an important component of the Bronxchester Urban Renewal Plan and the South Bronx Initiative Plan; and

WHEREAS, the applicant notes that, aside from the requested use variance and the rooftop parking authorized by the Board under BSA Cal. No. 73-13-BZ, the proposal complies in all respects with the applicable bulk regulations; and

WHEREAS, accordingly, the Board finds that, per ZR § 72-21(c), this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, per ZR § 72-21(d), the hardships of the site were not self-created and that a conforming development of the site would not satisfy the programmatic needs of MCNY; and

WHEREAS, the Board also finds that, consistent with ZR § 72-21(e), the requested use waiver is the minimum necessary to afford MCNY the relief it needs to satisfy its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Mayor's Office of Environmental Coordination ("MOEC") has conducted an environmental review of the proposed action to determine if the proposal would result in any significant adverse environmental impacts that were not previously identified in the January 2012 Triangle Plaza Hub Environmental Assessment Statement (CEQR No. 11DME011X) or in the subsequent Technical Memorandum issued on May 17, 2013; and

WHEREAS, MOEC recommends in a May 6, 2014 Technical Memorandum that the developer provide a staff person (i.e. flag person) at the project's Brook Avenue driveways to ensure safety for pedestrians, cyclists and motorists; and

WHEREAS, MOEC also recommends in the Technical Memorandum that the proposed building be required to meet an increase in attenuation requirements of 45 dBA or lower, rather than the 50 dBA previously required; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

Therefore it is Resolved, that the Board of Standards and Appeals adopted the findings of the May 6, 2014 Technical Memorandum prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6

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NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site partially within a C4-4 zoning district and partially within an M1-1 zoning district, the construction of a two-story mixed commercial (Use Group 6) and community facility (Use Group 3) building, contrary to the use regulations set forth in ZR § 42-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 28, 2014" – Fifteen (15) sheets; and *on further condition*:

THAT the building parameters will be: two stories; a maximum floor area of 85,220 sq. ft. (1.4 FAR); a maximum of 61,697 sq. ft. of commercial floor area and a maximum of 23,523 sq. ft. of community facility floor area, as illustrated on the BSA-approved plans;

THAT a staff person (i.e. flag person) be provided at the building's Brook Avenue driveways to ensure safety for pedestrians, cyclists and motorists;

THAT the proposed community facility uses in the building be required to provide attenuation levels of 31 dBA along the East 149th Street and Brook Avenue façades, and attenuation measures of 33 dBA along the rear facades of the building, which face the subway tracks, to maintain interior noise levels of 45 dBA or lower;

THAT the proposed commercial uses in the building be required to provide attenuation levels to ensure an interior noise environment of 50 dBA;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

325-13-BZ

CEQR #14-BSA-087X

APPLICANT – Eric Palatnik, P.C., for 3170 Webster Avenue LLC, owner; CT Norwood LLC, lessee.

SUBJECT – Application December 23, 2013 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (*Crunch Fitness*) within a portions of a commercial building. C2-4/R7D zoning district.

PREMISES AFFECTED – 3170 Webster Avenue, East side of Webster Avenue at intersection with East 205th Street. Block 3357, Lot 37, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 22, 2013, acting on DOB Application No. 220329357, reads, in pertinent part:

Proposed physical culture establishment in a C2-4 (R7D) zoning district is contrary to ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-4 (R7D) zoning district, legalization of an existing physical culture establishment ("PCE") on portions of the first and second story of an existing four-story mixed commercial and community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2014, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Bronx, recommends conditional approval of the application; and

WHEREAS, the subject site is located on the east side of Webster Avenue near the terminus of East 205th Street, within a C2-4 (R7D) zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Webster Avenue and 19,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story mixed commercial and community facility building with 61,633 sq. ft. of floor area (3.15 FAR); and

WHEREAS, the PCE occupies 448 sq. ft. of floor area on the first story and 14,521 sq. ft. of floor area on the second story, for a total PCE floor area of 14,969 sq. ft.; and

WHEREAS, the PCE is operated as Crunch; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE are Monday through Saturday, from 5:00 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no

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objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; however, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, at hearing, the Board requested clarification regarding the required number of accessory parking spaces for the building; and

WHEREAS, in response, the applicant submitted an analysis confirming that the proposed parking complies with the applicable provisions of the Zoning Resolution; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA087X dated December 14, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C2-4 (R7D) zoning district, legalization of an existing physical culture establishment ("PCE") on portions of the first and second story of an existing four-story mixed commercial and

community facility building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received March 7, 2014" – Seven (7) sheets; and on further condition:

THAT the term of the PCE grant will expire on March 17, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 and parking compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

9-14-BZ

CEQR #14-BSA-101M

APPLICANT – Warshaw Burstein, LLP, for 177th Upper Broadway Holdings LLC, owner; 4168 Broadway Fitness Group LLC, lessee.

SUBJECT – Application January 17, 2014 – Special Permits (§§73-36, 73-52) to allow the operation of a physical culture establishment (*Planet Fitness*) within the existing building and to permit the fitness center use to extend 25 feet into the R7-2 zoning district. C8-3 and R7-2 zoning district.

PREMISES AFFECTED – 4168 Broadway, southeast corner of the intersection formed by West 177th Street and Broadway, Block 2145, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 9, 2014, acting on DOB

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Application No. 121852094 reads in pertinent part:

Proposed use as a physical culture establishment .

. . . is contrary to ZR 32-10;

Proposed extension of physical culture establishment use into R72 portion of zoning lot is contrary to ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first, second and third stories of an existing six-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R7-2 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Manhattan, recommends approval of the application; and

WHEREAS, Councilmember Ydanis Rodriguez submitted testimony in opposition to the application, citing concerns about an “oversaturation of gyms in the immediate vicinity”; and

WHEREAS, the subject site is a trapezoid-shaped zoning lot located on southeast corner of the intersection of West 177th Street and Broadway, partially within a C8-3 zoning district and partially within an R7-2 zoning district; and

WHEREAS, the site has approximately 156 feet of frontage along Broadway, approximately 102 feet of frontage along West 177th Street, and 14,196 sq. ft. of lot area; 12,295 sq. ft. of lot area (87 percent of the lot area) is within the C8-3 portion of the site and 1,901 sq. ft. of lot area (13 percent of the lot area) is within the R7-2 portion of the site; and

WHEREAS, the site is occupied by a six-story commercial building with 84,771 sq. ft. of floor area (5.97 FAR); and

WHEREAS, the proposed PCE will occupy 1,496 sq. ft. of floor area on the first story and 14,115 sq. ft. of floor area on both the second and third stories, for a total PCE floor area of 29,726 sq. ft.; and

WHEREAS, the applicant states that the proposed PCE will operate as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C8-3 portion of the site 25 feet into the R7-2 portion of the site; and (2) pursuant to ZR § 73-36, obtain a special permit for the operation of the PCE; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are

permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issue of single ownership, the applicant submitted documents reflecting the history of ownership of the subject site and adjoining sites showing that the zoning lot was in single ownership prior to December 15, 1961; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 12,295 sq. ft. of the site’s 14,196 sq. ft. of lot area (87 percent) is located within a C8-3 zoning district; and

WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R7-2 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is occupied with a portion of the existing building that lacks street frontage and is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R7-2 district is partially obstructed by a fire stair, which further limits its ability to accommodate a conforming use; and

WHEREAS, accordingly, absent the requested extension of the PCE into the residential space, a substantial portion of the building would be unusable and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R7-2, for a permitted use; and

WHEREAS, as to the extension’s effect on the surrounding area, the applicant states that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by high-density commercial and residential uses; further, the proposed PCE will be entirely within the existing building; and

WHEREAS, the applicant also notes that the building has been primarily used for parking since at least 1961 and that the proposed PCE is a less intense commercial use, which will be more compatible with the nearby conforming uses; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C8-3 zoning district portion of the lot into the R7-2 portion will not cause impairment of the essential character or the future use or development of the

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surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-52; and

WHEREAS, turning to the findings for ZR § 73-36, the applicant represents that the services at the PCE include facilities for group training, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be 24 hours per day and seven days per week; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the future use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, finally, the PCE will not interfere with any pending public improvement project; and

WHEREAS, at hearing, the Board questioned whether the mezzanine was required to be made accessible for persons with certain physical disabilities; and

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible because the amenities offered on that level are available on one or more accessible levels of the PCE; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as 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, 14BSA101M, dated January 18, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first, second and third stories of an existing six-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R7-2 portion of the zoning lot, contrary to ZR § 77-11; *on condition* that all work will substantially conform to drawings filed with this application marked “March 27, 2014” – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the certificate of occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

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18-14-BZ

CEQR #14-BSA-106K

APPLICANT – Warshaw Burstein, LLP, for Infinity Fulton Street, LLC, owner; 1245 Fulton Fitness Group, LLC, lessee.

SUBJECT – Application January 29, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building, C4-5 zoning district.

PREMISES AFFECTED – 1245 Fulton Street, north side of Fulton Street between Bedford Avenue and Arlington Place, Block 1842, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 14, 2014, acting on DOB Application No. 320851306, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C4-5D zoning district, per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-5D zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in the *City Record*, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 3, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the north side of Fulton Street between Bedford Avenue and Arlington Place, within a C4-5D zoning district; and

WHEREAS, the site has approximately 54 feet of frontage along Fulton Street and 7,957 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a one-story building, which is proposed to be demolished and replaced with a one-story building with 7,836 sq. ft. of floor area and 5,500 sq. ft. of floor space in the cellar; and

WHEREAS, the proposed PCE will occupy the entire building, for a total PCE size of 13,336 sq. ft.; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the Type II proposed action discussed in the CEQR Checklist (CEQR No. 14BSA106K) dated January 29, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C4-5D zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 25, 2014” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

28-12-BZ

APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.

SUBJECT – Application February 6, 2012 – Special Permit (§73-49) to legalize the required accessory off street rooftop parking on the roof of an existing two-story office building, contrary to ZR 44-11, and Special Permit (§73-44) to reduce required accessory off street parking for office use, contrary to ZR 44-20. M1-1 zoning district.

PREMISES AFFECTED – 13-15 37th Avenue, 13th Street and 14th Street, bound by 37th Avenue to the southwest, Block 350, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

243-12-BZ

APPLICANT – EPDSCO, Inc., for Best Equities LLC, owner; Page Fit Inc. d/b/a Intoxx Fitness, lessee.

SUBJECT – Application August 7, 2012 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Intoxx Fitness*). M3-1 zoning district.

PREMISES AFFECTED – 236 Richmond Valley Road,

southern side of Richmond Valley Road between Page Avenue and Arthur Kill Road, Block 7971, Lot 200, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for decision hearing closed.

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.

SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility.

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Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for continued hearing.

265-13-BZ

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*), contrary to floor area (§§23-141, 24-161), maximum dwelling unit (§§23-22, 24-20), maximum building height (§23-631), and minimum parking (§25-25e) regulations. R3A zoning district.

PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

311-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Midyan Gate Realty No 3 LLC, owner; for Global Health Clubs, LLC, lessee.

SUBJECT – Application November 25, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Retro Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 325 Avenue Y, northeast corner of Shell Road and Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

317-13-BZ

APPLICANT – Law office of Lyra J. Altman, for Michelle Schonfeld & Abraham Schonfeld, owners.

SUBJECT – Application December 10, 2013 – Special Permit (§73-622) for the enlargement of an existing two family home, to be converted to a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1146 East 27th Street, west side of 27th Street between Avenue K and Avenue L, Block 7626, Lot 63, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision hearing closed.

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) to add a third and fourth floor to an existing school building (*Congregation Chasidei Belz Beth Malka*), contrary to floor area (§24-11) lot coverage, maximum wall height (§24-521), side yard (§24-35), front yard (§24-34) and rear yard (§24-361) regulations. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4'E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

MINUTES

*CORRECTION

The resolution adopted on September 21, 1965, under Calendar No. 539-65-BZ and printed in Volume L, Bulletin No. 39, is hereby corrected to read as follows:

539-65-BZ

APPLICANT – Paul F. Pellicoro for Lowell Harwood, owner; Diriro, Inc., lessee.

SUBJECT- Application May 11, 1965 – Decision of the Borough Superintendent, under Section 72-21 of the Zoning Resolution and Section 666 (7) of the New York City Charter, to permit in a C2-5 and R8 district, the erection of a seventeen story enlargement to an existing seventeen story office and show-room building that exceeds the permitted floor area ratio, encroaches on the required rear yard with a public garage.

PREMISES AFFECTED – 971-979 Third Avenue, northeast corner of 58th Street, 206-216 East 59th Street, Block 1332, Lots 1, 3, 4, 5, 7, 8, 9, 40, 41, 42, 43 and 44, Borough of Manhattan.

APPEARANCES –

For Applicant: Paul F. Pellicoro.

For Opposition: John J. Cavaliere and Ethel C. Cramer.

ACTION OF BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chairman Foley, Commissioner Fox, Commissioner Becker and Commissioner Klein.....4

Negative.....0

Absent: Vice-Chairman Kleinert.....1

THE RESOLUTION –

WHEREAS, a public hearing was held on this application on July 13, 1965, after due notice by publication in the Bulletin; laid over to July 20, 1965; then to September 8, 1965; hearing closed; then to September 21, 1965; and

WHEREAS, the decision of the Borough Superintendent, dated April 28, 1965, acting on Alt. Applic. 696/1965, reads:

- “2. F.A.R. contrary to Sec. 33-121 of Z.R.
3. Provide rear yard as req'd. by Sec. 33-26
4. Commercial use above 2nd Fl contra to Sec. 32-42 and Sec. 33-431 of Z.R.
5. Proposed Garage contrary to Sec. 32-17 of Z.R. if 150 spaces or less or contrary to Sec. 74-52 if in excess of 150 spaces.”

and

WHEREAS, the premises and surrounding area were inspected by a committee of the Board; and

WHEREAS, the Board finds that the entire property is L-shaped; that the applicant has submitted data to show that he cannot make a reasonable return on the building unless a variance is granted; that the variance will not impair the character of the neighborhood; that the hardship has not been self-created; and that this is a minimum variance necessary to the applicant; and

WHEREAS, the Board finds that the applicant has

substantiated a basis to warrant exercise of discretion to grant under Section 72-21 of the Zoning Resolution, and is therefore entitled to relief on the grounds of practical difficulty and or unnecessary hardship.

Resolved, that the Board of Standards and Appeal does hereby make a variation in the application of the Zoning Resolution and that the application be and it hereby is granted under Section 72-21, to permit in a C2-5 and R8 district, the erection of a 17-story enlargement to an existing 17-story office and showroom building that exceeds the permitted floor area ratio, encroaches on the required rear yard and has a commercial use above the 2nd floor, on condition that the building shall conform to drawings filed with this application marked "Received May 11, 1965", 7 sheets, "June 9, 1965", one sheet and "September 16, 1965", 2 sheets; that the accessory garage in the building shall be as approved by the Department of Buildings with no public garage facility; that there shall be no advertising signs above the second floor; that all laws, rules and regulations applicable shall be complied with; and that permit shall be obtained, work completed and a Certificate of Occupancy obtained within one year from the date of this resolution.

The resolution has been amended in the part of the PREMISES AFFECTED which read: “..... Lots 1, 3, 4, 5, 7, 8, 9, 40, 41, 42, 43 and 45, Borough of Manhattan.” Now reads: “...Lots 1, 3, 4, 5, 7, 8, 9, 40, 41, 42, 43 and 44, Borough of Manhattan.”

Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.

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*CORRECTION

The resolution adopted on June 17, 2014, under Calendar No. 142-92-BZ and printed in Volume 99, Bulletin No. 25, is hereby corrected to read as follows:

142-92-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application March 20, 2014 – Amendment of a previously approved special permit (§73-48) for a community facility (*New York Methodist Hospital*). The application seeks to amend the approved plans to accommodate required accessory parking in a new ambulatory care facility (BSA Cal #142-92-BZ)

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block 1084, Lot 36, 164, 1001/1002, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previous approval, which, pursuant to ZR § 73-48, allowed the construction of 518 parking spaces contrary to ZR §§ 25-31 and 36-21; the proposed amendment seeks to: (1) enlarge the subject zoning lot; (2) reduce and reclassify certain parking spaces authorized under the special permit; and (3) permit other alterations related to the redevelopment of the site; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 29, 2014, and then to decision on June 17, 2014; and

WHEREAS, at the April 29, 2014 public hearing, the Board set a May 20, 2014 decision date; and

WHEREAS, however, subsequent to the April 29, 2014 hearing, a representative of Preserve Park Slope communicated with Board staff and NYM about its request for supplemental documents from NYM; the Board declined to request the documents and NYM declined to provide the documents directly; and

WHEREAS, Preserve Park Slope then sought judicial relief to obtain the documents in New York State Supreme Court by Order to Show Cause; and

WHEREAS, the court issued a stay which prohibited the Board from closing the hearing and rendering a decision as scheduled on May 20, 2014; on June 4, 2014, the court lifted the stay but did not issue a ruling on the subpoena request, which is pending; and

WHEREAS, a companion application for a variance

pursuant to ZR § 72-21 required for development of the site was filed under BSA Cal. No. 289-13-BZ and decided at the same hearing; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this application is brought on behalf of New York Methodist Hospital (“NYM”), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject site comprises the majority of Block 1084; it includes Tax Lots 164, 1001, and 1002, and has frontages along Fifth Street, Sixth Street, Seventh Avenue, and Eighth Avenue; the applicant notes that when the subject special permit was granted, the site comprised Lots 164, 1001, and 1002, however, at the time the lots were designated as Lots 1, 17, and 64; as for Lot 39, it was formed by the merger of former Lots 25, 26, 28, 40-44, 46, 48, and 50-59; and

WHEREAS, the site is located partially within an R6 (C1-3) zoning district, partially within an R6 zoning district, and partially within an R7B zoning district; and

WHEREAS, the site has approximately 510 feet of frontage along Fifth Street, approximately 696 feet of frontage along Sixth Street, 200 feet of frontage along Seventh Avenue, 200 feet of frontage along Eighth Avenue, and 120,569 sq. ft. of lot area; and

WHEREAS, the Board has exercised jurisdiction over the site since January 11, 1994, when, under the subject calendar number, the Board granted, pursuant to ZR §§ 72-21, 73-481, and 73-482, a variance and special permit to allow the construction of a five-story mixed commercial and medical office building (“MOB”) and a parking garage for 518 automobiles, contrary to ZR § 33-431 (height and setback), ZR §§ 22-10, 77-12, and 77-332 (location of entrance to a group parking facility accessory to commercial uses, ZR § 36-63 (required number of loading berths), ZR §§ 22-10, 36-683, 77-12, and 77-332 (enclosure of and location of entrance to loading berths), and ZR §§ 25-31 and 36-21 (maximum number of parking spaces); and

WHEREAS, the site is occupied by the MOB, a 12-story hospital building containing hospital-related facilities and staff dwellings (the “Wesley House”), the subject parking garage, which consists of three-below grade parking levels and surface parking, a surface parking lot on the southeast corner of the site, and a series of townhouses; and

WHEREAS, the applicant notes that, under the special permit, the parking spaces are designated required accessory spaces for retail uses (76 spaces), required accessory to the Wesley House (49 spaces), and permitted accessory spaces to hospital-related uses (393 spaces); and

WHEREAS, the applicant states that NYM seeks a variance to construct a new seven-story ambulatory care facility (the “Center for Community Health” or the “Center”) on adjacent Lot 39; the applicant states that, in connection with that proposal, it requests an amendment to the prior approval to allow: (1) enlargement of the subject zoning lot; (2) reduction and reclassification of parking spaces authorized

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under the special permit; and (3) other alterations to the site plan and to the existing garage related to the construction of the Center for Community Health; and

WHEREAS, as to the enlargement of the zoning lot, the applicant states that Lot 39 will be combined with the lots that are the subject of the prior variance and special permit (Lots 164, 1001, 1002) and the Center will be built on that portion of the new zoning lot; and

WHEREAS, as to the reduction and reclassification of parking spaces, the applicant states that 60 of the 393 permitted accessory parking spaces will be reclassified as required accessory parking for the Center, 49 of the 393 permitted accessory parking spaces will be reclassified as accessory to existing hospital uses within the MOB, and 38 of the 393 permitted accessory spaces will be eliminated to allow the construction of the Center's loading area; the result will be a decrease in the total number of permitted accessory parking spaces within the garage from 393 to 246 and an increase in the total number of required accessory spaces for new and existing hospital and ambulatory care facility uses from 0 to 109; the designations for the required accessory parking for the retail (76 spaces) and the Wesley House (49 spaces) will not change; accordingly, the proposal reflects a net reduction in the total number of spaces authorized under the special permit from 518 to 480; and

WHEREAS, the applicant also notes that an additional parking garage will be constructed on the site to accommodate the 350 accessory spaces required in connection with the Center; and

WHEREAS, finally, as to the alterations to the site plan, the applicant states that portions of the existing garage must be demolished in order to accommodate the loading areas for the Center; and

WHEREAS, as addressed in BSA Cal. No. 289-13-BZ, the Board agrees with the applicant that the proposed changes to the existing parking garage and the proposed development of the Center for Community Health are in furtherance of NYM's programmatic needs as a non-profit teaching hospital and will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, based upon its review of the record, the Board finds the requested amendments to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution to permit the noted modifications; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 13, 2014'— eight (8) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 17, 2014.

The resolution has been amended to add “and ambulatory care facility uses” to the 18th WHEREAS.

Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.

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*CORRECTION

The resolution adopted on June 17, 2014, under Calendar No. 11-93-BZ and printed in Volume 99, Bulletin No. 25, is hereby corrected to read as follows:

11-93-BZ

APPLICANT – Sheldon Lobel, P.C. for Joy Kiss Management, LLC, owner; Chen Qiao Huang (Good fortune Restaurant), lessee.

SUBJECT – Application December 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously approved variance (§72-21), which expired on March 20, 2013; Waiver of the Rules. R3-2/C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, reopening, an extension of term for the operation of an eating and drinking establishment, which expired on March 15, 2014, and an extension of time to obtain a certificate of occupancy, which expired on March 20, 2013; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in the City Record, with a continued hearing on May 20, 2014, and then to decision on June 17, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends disapproval of the application, citing the following concerns regarding the eating and drinking establishment at the site: (1) that the establishment is serving alcohol with an expired liquor license; (2) that it is being operated as a catering facility without a public assembly certificate of operation (“PA”) or an amended certificate of occupancy (“CO”); and (3) that it has open violations from the Department of Buildings (“DOB”); and

WHEREAS, the subject site is located on the northeast corner of the intersection of Kissena Boulevard and Laburnum Avenue, within a C2-2 (R3-2) and R3-2 zoning districts; and

WHEREAS, the site has 40,830 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building operated as a restaurant (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 1958 when, under BSA Cal. No. 788-57-BZ, the Board granted a variance to permit the construction of a one-story storage garage and motor vehicle repair shop, with two gasoline dispensing pumps, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, on March 15, 1994, under the subject calendar number, the Board granted a special permit under ZR § 11-413 to permit the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking, for a term of ten years, which expired on March 15, 2004; and

WHEREAS, on October 5, 2010, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on March 15, 2014, and an amendment pursuant to ZR § 11-412 to permit certain modifications to the building; a condition of the grant was that a CO be obtained by October 5, 2011; and

WHEREAS, most recently, on March 20, 2012, the Board granted an extension of time to obtain a CO, to expire on March 20, 2013; and

WHEREAS, the applicant now requests an extension of term and an extension of time to obtain a CO; and

WHEREAS, at hearing, the Board directed the applicant to: (1) respond the concerns of the community board; (2) remove the food storage trucks from the site; and (3) clarify the location and screening of the proposed garbage storage area; and

WHEREAS, in response, the applicant confirmed that: (1) alcohol is not available for purchase at the establishment; (2) it will be seeking a PA and a CO for a Use Group 6 eating and drinking establishment; (3) there is no catering (Use Group 9) at the site; and (4) the nine remaining open DOB violations are related to the lack of PA and CO for Use Group 6; and

WHEREAS, as to the food storage trucks, the applicant submitted photographs demonstrating that such trucks had been removed; and

WHEREAS, as to the garbage storage area, the applicant provided an amended plot plan, which details the location and screening of the area; the applicant also represents that there is a drain in the area and that the dumpster will be cleaned twice per day; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of application marked ‘Received June 3, 2014’– (3) sheets; Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 15, 1994, to grant a one-year extension of time to obtain a certificate of occupancy, to expire on June 17, 2015 and to grant a ten-year extension of term, to expire on March 15, 2024; *on condition*

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that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this and *on further condition:*

THAT use of the site shall be limited to a restaurant (Use Group 6) with accessory parking for 61 automobiles;

THAT all signage shall comply with C2 zoning district regulations;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by June 17, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 17, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

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*CORRECTION

The resolution adopted on February 11, 2014, under Calendar No. 239-02-BZ and printed in Volume 99, Bulletin No. 7, is hereby corrected to read as follows:

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an amendment, and an extension of term for an eating and drinking establishment (Use Group 6), which expired on December 12, 2012; and

WHEREAS, a public hearing was held on this application on February 26, 2013, after due notice by publication in the *City Record*, with continued hearings on March 23, 2013, June 11, 2013, September 24, 2013, December 10, 2013, and January 14, 2014, and then to decision on February 11, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends denial of the requested extension of term until (1) the impacts on conforming uses are mitigated and (2) the noise and vibration from the HVAC and exhaust equipment are addressed and that the term be limited to two years; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, the adjacent neighbor, represented by counsel, provided testimony in opposition to the operation of the restaurant, citing the following primary concerns: (1) the rooftop mechanicals create noise and vibration that can be heard in the adjacent building and were installed contrary to plan and without permits; (2) the kitchen exhaust is contrary to Code and emits excessive sound, vibration, and

odors; (3) garbage collection is disruptive as it occurs at late and early hours; (4) the use of the cellar is contrary to the Certificate of Occupancy and egress and ventilation requirements; and (5) the use of upper floors for commercial use is contrary to the terms of the variance; and

WHEREAS, certain other members of the community provided testimony in opposition to the operation of the restaurant, noting that the variance is limited to the cellar, first floor, and rear portion of the second floor, but commercial use also occupies the remainder of the building; and

WHEREAS, the subject site is on the south side of Waverly Place between Sixth Avenue and Washington Square West/MacDougal Street, within an R7-2 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a four-story townhouse building occupied on the first floor and cellar by a Use Group 6A restaurant, Babbo; the occupancy of the front portion of the second floor and the entire third and fourth floors is limited to conforming use; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted an application under ZR § 72-21, to permit the re-establishment of a Use Group 6A eating and drinking establishment, without music or entertainment, located at the cellar level, ground floor, and second floor of the subject premises, and to permit the continuation of a non-conforming accessory business sign; and

WHEREAS, on December 14, 2004, the Board granted an amendment to permit the enlargement of the cellar for use as a wine storage area for the existing restaurant; and

WHEREAS, in response to the neighbor's concerns related to the HVAC units, the applicant agreed to adjust the HVAC equipment mounted on the dunnages of the building's fourth-floor roof, extend the kitchen exhaust up the building, as per new plans filed with and approved by DOB and LPC, and enclose the fan equipment of the kitchen exhaust within an acoustical enclosure; and

WHEREAS, the applicant also states that (1) the installation of all HVAC units has been approved and it is resolving any inconsistencies between the plans and the built conditions with DOB and ECB; (2) new, more effective, and quieter mechanical units have been installed, which include a low noise fan rotor, low speed fan motor, a compressor sound attenuation blanket and new vibration pads between the unit and dunnage for each unit; and (3) its acoustic engineer has studied the sound of the new system and concludes that the noise levels in the adjacent building are reduced and now match the ambient noise level, thus not exceeding any Noise Code limits; and

WHEREAS, as to the exhaust duct, the applicant states that it submitted DOB and LPC permits for the installation work and notes that the current applications and approvals supersede all prior ones and includes a custom-designed enclosure for the exhaust duct fan apparatus and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, dated September 9, 2013, which permits the changes to the rooftop mechanicals; and

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WHEREAS, as to the garbage collection and bottle-crushing, the applicant states that it employs a service that is restricted to pickup after 8:00 a.m. and that it has installed a camera to monitor collections which reflects that collection has occurred after 8:00 a.m. and is therefore in compliance; and

WHEREAS, as to the occupancy of the cellar, the applicant states that it has removed a prep table and oven from the cellar and is in the process of obtaining a permit to remove a sink at which time it will be able to file a revised Certification of Correction and have the cellar use violation closed; and

WHEREAS, as to the use of the upper floors, the applicant represents that the second floor apartment is used as a pied a terre for one of the owners and that the third/fourth floor duplex was under lease until vacated in September 2012; and

WHEREAS, the applicant submitted photographs of the vacant duplex residential unit; and

WHEREAS, the applicant represents that office use has ceased and the duplex apartment is currently listed with a real estate broker to find a new tenant; and

WHEREAS, the Board finds that, in response to the neighbor's concerns, the applicant has undertaken significant improvements to its HVAC and exhaust fan duct systems, completed work while its application was in the hearing public process, and also addressed concerns related to the garbage collection hours and use of the cellar and the upper floors; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports a grant of the requested ten-year extension of term.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution will read: "to extend the term of the variance for ten years from the prior expiration on December 12, 2012 to December 12, 2022; *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received April 19, 2013' – one (1) sheet; and *on further condition*;

THAT the term will expire on December 12, 2022;

THAT a new Certificate of Occupancy be obtained by February 11, 2015;

THAT all rooftop mechanicals and associated sound attenuation measures be installed and maintained pursuant to the BSA-approved plans;

THAT the rooftop mechanicals and all other use of the building comply with Noise Code regulations;

THAT garbage collection hours are restricted to 8:00 a.m. to 8:00 p.m.;

THAT the use of the cellar must comply with all relevant regulations;

THAT the use of the front portion of the second and the entire third and fourth floors is restricted to residential occupancy;

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Permit No. 102702522)

Adopted by the Board of Standards and Appeals, February 11, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

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*CORRECTION

The resolution adopted on May 13, 2014, under Calendar No. 177-07-BZ and printed in Volume 99, Bulletin No. 20, is hereby corrected to read as follows:

177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application January 2, 2014 – Amendment of an approved Variance (§72-21) which permitted construction of a two-story and mezzanine, two-family residential building, contrary to front yard regulations (§23-45(a)); the amendment seeks to permit construction of a three-story, three-family residential building. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
Absent: Commissioner Montanez1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow certain modifications to a residential building that does not comply with the front yard requirements; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in The City Record, with a continued hearing on April 29, 2014, and then to decision on May 13, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Glenmore Avenue and Milford Street, within an R5 zoning district; and

WHEREAS, the site has approximately 20 feet of frontage along Glenmore Avenue, 90 feet of frontage along Milford Street, and 1,800 sq. ft. of lot area; and

WHEREAS, the site is vacant; and

WHEREAS, on June 23, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a two-story, two-family residential building at the site that did not comply with the front yard requirements of ZR § 23-45(a) (the “Original Building”); and

WHEREAS, the Original Building was proposed to

have two stories and a mezzanine, 2,241 sq. ft. of floor area (1.24 FAR), a wall height of 30’-0”, a building height of 32’-9”, two dwelling units, two parking spaces in the side yard, a front yard with a depth of 10’-0” along Glenmore Avenue, no front yard along Milford Street, and a side yard with a width of 30’-6”; and

WHEREAS, pursuant to the grant, substantial construction was to be completed by June 23, 2013; however, as of that date, substantial construction had not been completed; accordingly, on October 29, 2013, the Board granted an extension of time to complete construction for two years, to expire on October 29, 2015; and

WHEREAS, the applicant now seeks to amend the grant to allow three stories, 2,660.61 sq. ft. of floor area (1.48 FAR), a wall height of 28’-4”, a building height of 31’-10”, three dwelling units, two parking spaces in the side yard, no front yards along Milford Street and Glenmore Avenue frontages, and a side yard along the southern lot line with a width of 45’-0” (the “Proposed Building”); and the proposed building will be built up to the lot line on Glenmore Avenue; and

WHEREAS, the applicant notes that the Proposed Building deviates from the Original Building as follows: (1) an increase in floor area of 419.61 sq. ft.; (2) an FAR increase of 0.24; (3) a 1’-8” decrease in wall height; (4) a 1’-1” decrease in building height; and (5) a 14’-6” increase in the proposed side yard; and

WHEREAS, the applicant notes that, as with the Original Building, the Proposed Building complies in all respects with the R5 bulk regulations, except that, like the Original Building, it does not provide a front yard with a depth of 10’-0” along Milford Street; thus, the scope of the waiver requested has not changed; and

WHEREAS, further, the applicant states that although the Proposed Building includes a modest increase in floor area, its wall and building height are decreased, and the width of its side yard is increased by nearly 50 percent; and

WHEREAS, in addition, the applicant contends that the Proposed Building is consistent with the character of the surrounding community, which, in the original grant, the Board recognized as including mostly two- and three-story homes and multiple dwellings; and

WHEREAS, the applicant also notes that, in response to the Board’s comments at hearing, it revised the Proposed Building to provide a wider side yard and to align with the street wall location and height of the adjacent building along Glenmore Avenue; and

WHEREAS, based upon its review of the record, the Board finds that the proposed modification is appropriate, with certain conditions, as noted below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 23, 2009, to permit the noted modifications, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received April 11, 2014’ - (11) sheets; and *on further condition*:

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THAT bulk parameters of the building will be as follows: a maximum of three stories, a maximum of 2,660.61 sq. ft. of floor area (1.48 FAR), a maximum wall height of 28'-4", a maximum building height of 31'-10", three dwelling units, two parking spaces in the side yard, and a minimum side yard width of 45'-0";

THAT substantial construction will be completed by October 29, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board will remain in effect;

THAT DOB must 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."

(DOB Application No. 302233189)

Adopted by the Board of Standards and Appeals, May 13, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

MINUTES

*CORRECTION

The resolution adopted on June 10, 2014, under Calendar No. 164-13-A and printed in Volume 99, Bulletin Nos. 22-24, is hereby corrected to read as follows:

164-13-A

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse Department of Buildings’ determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated May 3, 2013, acting on Department of Buildings Application No. 320378088 reads, in pertinent part:

This Department regrets it cannot issue a Letter of No Objection for New Law Tenant Class A M.D. & Single Room Occupancy to [be] occupied or rented for less than 30 days as per Chapter 225 of the Laws of 2010, which clarified existing provisions related to occupancy of Class A Multiple Dwellings.

In order to allow such use, an Alteration Application must be filed with the Department to change use and Certificate of Occupancy obtained if permitted by zoning; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York State Assemblymember Linda B. Rosenthal and New York City Council Member Helen Rosenthal provided testimony in opposition to the appeal, citing concerns about illegal transient hotel use including occupancy periods of just days at a time, which are disruptive to the permanent tenants and the surrounding residential uses; and

WHEREAS, the Goddard Riverside SRO Law Project

and the Hotel Trades Council provided testimony in opposition to the appeal, citing concerns about a history of harassment towards permanent tenants and otherwise protecting their rights; and

WHEREAS, certain community members and building residents provided testimony in opposition to the appeal, citing concerns about transient use in a residence zoning district and within a building occupied by permanent tenants required to share space with those renting on a short term; and

WHEREAS, certain community members spoke in support of the appeal, citing concerns that the building might otherwise be converted into a homeless shelter; and

WHEREAS, the site is located on the north side of West 79th Street between West End Avenue and Riverside Drive within an R10A zoning district and is occupied by a ten-story (with a partial 11th story) building (the “Building”); and

WHEREAS, this appeal seeks reversal of the Determination, thereby directing DOB to issue a Letter of No Objection stating that the use of the Building as Class A single room occupancy for periods of no less than one week is permitted by the existing certificate of occupancy No. 53010; and

Building History

WHEREAS, the Building was constructed in 1906 as the Lasanno Court, an approximately 40-unit apartment building; and

WHEREAS, during the Great Depression, in the 1930s, the Building was subdivided into single room occupancy (SRO) units; and

WHEREAS, in 1939, the New York State Legislature adopted MDL § 248, known as the Pack Bill, which provides regulations for SRO buildings; and

WHEREAS, in 1943, the Building was altered to comply with MDL § 248 and on March 25, 1943, DOB issued the Building’s first CO permitting 247 SRO units; the Building was renamed the Imperial Court Hotel; and

WHEREAS, DOB also issued COs in 1954 and September 1960; and

WHEREAS, on November 7, 1960, DOB issued the most recent CO permitting in the cellar, “one (1) superintendent’s apartment, boiler room, storage and tenants’ laundry”; on the first floor, “sixteen (16) rooms-single room occupancy, two (2) community kitchenettes, registration desk, manager’s office and lobby of building”; on the second through tenth floors, “twenty-three (23) rooms-single room occupancy and two (2) community kitchenettes”; and in the penthouse, “four (4) rooms – single room occupancy;” and

WHEREAS, the applicant states that in total, the CO permits 227 SRO Units and that currently and historically, 64 of the 227 SRO units have been regulated through rent control or stabilization (the “Statutory Units”); and

WHEREAS, the Appellant states that since 1979, all of the 64 Statutory Units and all of the 163 non-Statutory Units have been rented for periods of no less than seven days, in

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compliance with the CO and the MDL; the Appellant submitted occupancy logs for 2008, 2009, 2010, and 2011 in support of this claim; and

Procedural History

WHEREAS, on January 13, 2011, DOB issued Notices of Violation in connection with the seven-day rentals; and

WHEREAS, on January 19, 2011, the owner applied to HPD for a Certificate of No Harassment (CONH), pursuant to Administrative Code § 28-107.4 in connection with its application for a permit to build a second means of egress; and

WHEREAS, on September 13, 2011, the Department of Housing Preservation and Development (HPD) commenced a proceeding against the owner at the Office of Administrative Trials and Hearings (OATH) seeking a denial for the application for a CONH on the grounds that it had committed acts of harassment against some of the tenants; and

WHEREAS, on December 7, 2012, the OATH administrative law judge held that the owner had committed some acts of harassment against some of the tenants and recommended denial of the CONH; and

WHEREAS, in January 2013, the Environmental Control Board sustained the violations, finding that stays of less than 30 days were not permitted by the CO; and

WHEREAS, on February 11, 2013, the owner requested a Letter of No Objection (LNO) from DOB stating that the use of the Building as a Class A SRO for periods of no less than one week is permitted by the existing certificate of occupancy; DOB's denial of that request forms the basis of the subject appeal; and

WHEREAS, the Building is the subject of an Article 78 proceeding in New York Supreme Court, (Index No. 103032-2012) appealing ECB's decision to sustain the violations and is pending; and

WHEREAS, the Appellant states that since January 2011, it has attempted to rent the 163 non-statutory Units for periods of no less than 30 days, but the majority of the units have remained vacant, a condition which prompted the Appellant to seek the LNO to allow rental of the units for terms not less than one week; and

The Relevant Statutory Provisions

WHEREAS, relevant MDL provisions are provided below in pertinent part:

1939 Text

MDL § 248 (*Single Room Occupancy*)

(16) No room shall be rented in any such building for a period of less than a week.

1946 Text

(*Definitions*)

MDL § 4

(16) "Single room occupancy" is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the

occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling.

MDL § 4

(8) A "class A" multiple dwelling is a multiple dwelling which is occupied, as a rule, for permanent residence purposes . . .

MDL § 4

(9) A "class B" multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals . . .

1960 Text

MDL § 248 (*Single Room Occupancy*)

(16) It shall be unlawful to rent any room in any such dwelling for a period of less than a week.

MDL § 4 (*Definitions*)

Class A Multiple Dwelling: a multiple dwelling which is occupied, as a rule, for residence purposes and not transiently.

Class B Multiple Dwelling: a multiple dwelling which is occupied, as a rule, transiently.

2011 MDL Amendment (Chapter 225 of 2010)

MDL § 4.8(a): A "class A" multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit.

MDL § 248

(1) . . . A dwelling occupied pursuant to this section shall be deemed a class A dwelling and dwelling units occupied pursuant to this section shall be occupied for permanent residence purposes, as defined in paragraph a of subdivision eight of section four of this chapter.

(16) (*removed*); and

The Appellant's Position

WHEREAS, the Appellant asserts that the LNO should be issued for the following primary reasons: (1) the use of the Building for short-term occupancy of no less than one

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week was permitted at the time the CO was issued and MDL § 248 allowed Class A SRO units to be rented for periods of one week or more; and (2) Chapter 225 of 2010, an amendment to the MDL which requires that short-term residences may not be less than 30 days, applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant asserts that in 1943 and 1960, when the Building was issued COs permitting single room occupancy units, the MDL provided that SRO units may be lawfully rented and occupied for periods of no less than a week; and the legislative history of the 1939 enactment of MDL § 248(16), New York State case law, and independent scholarly research clearly support the statutory provision that there is a weekly minimum applied to the period of occupancy; and

WHEREAS, the Appellant states that in 1943, when the Building was issued a CO permitting SRO units, the plain language of MDL § 248 (16) – “No room shall be rented in any such building for a period of less than a week” - permitted the SRO Units to be rented for periods of no less than one week; and

WHEREAS, the Appellant relies on the text of MDL § 248 adopted in 1939 (the “Pack Bill”) and in effect in 1943; and

WHEREAS, the Appellant states that DOB is correct that in 1960, the MDL included definitions for Class A and Class B Multiple Dwelling, however, even if the 1960 text were operative, as was the case in 1939, these definitions did not define the length of permitted occupancy for Class A and Class B Multiple Dwelling, only that Class A must have been occupied, as a rule, for permanent residence purposes and Class B, as a rule, transiently; and

WHEREAS, the Appellant also considers the MDL § 248(16) in effect when the 1960 CO was issued - “it shall be unlawful to rent any room in any such dwelling for a period of less than a week;” and

WHEREAS, the Appellant asserts that the CO permits the Building to be used for single room occupancy and that prior to the MDL Amendment, the prior use of the Building was for short-term residences, in which occupants’ stay was restricted to no less than one week; and

WHEREAS, the Appellant agrees that MDL § 248(16) allows tenants to *pay* on a weekly basis, but there is not any basis to conclude that *occupancy* was for a 30-day minimum; and

WHEREAS, the Appellant asserts that the legislative history, court statements, and scholarly research support the conclusion that MDL § 248(16) expressly and implicitly permitted the SRO units to be lawfully occupied for periods of no less than a week and that it applied to both rental and occupancy; and

WHEREAS, the Appellant asserts that prior to the 2010 MDL Amendment (the “MDL Amendment”), the use of the Building was in compliance with MDL § 248(16) in that all rooms were rented for periods of no less than one week; and

WHEREAS, the Appellant asserts that based on the

communication surrounding the Pack Bill’s enactment during the Great Depression, it had multiple purposes including protecting occupants in multiple dwelling rooming houses from fire and to set up minimum standards for sanitation, maintenance, and operation and to provide health and safety protections for the visitors of the 1939-1940 World’s Fair who sought accommodations in excess of what the city’s hotels could provide; and

WHEREAS, the Appellant cites to the City of New York v. 330 Continental LLC, 60 A.D.3d 226 (1st Dept 2009) decision on whether the City was entitled to a preliminary injunction for the point that the court stated that SROs were entitled to short term rental of a week; and

WHEREAS, the Appellant also cites to scholarly research on New York City during the Great Depression which states that the city lifted regulations that prevented the operation of SROs and connected it to the World’s Fair needs; and

WHEREAS, as to the use and preservation of rights, the Appellant asserts that (1) since at least 1979, and most likely since 1943, the Building has been occupied by residential stays of no less than a week; (2) the right to rent the SRO Units for residential occupancies of no less than a week has been accrued; (3) the savings clause of MDL § 366 provides that the codification of Sections 1 through 4 of Chapter 225 of the Laws of 2010 will not impair the right to continue to rent the SRO Units for occupancies of no less than one week; and (4) Section 8 of the Laws of 2010 was not codified in the MDL and did not impair the Appellant’s accrued rights; and

WHEREAS, the Appellant asserts that since the existing CO permits weekly occupancy, it is irrelevant whether or not the Building had been historically occupied for stays as short as one week; and

WHEREAS, however, the Appellant asserts that it has submitted affidavits attesting to the fact that since at least 1979 (when the owner purchased the Building) and most likely since 1943 (when the first CO was issued), the policy of the Imperial Court has been that rooms may be rented and occupied for residential stays for periods of as short as one week; and

WHEREAS, the Appellant’s submissions include: an affidavit from the owner’s family member who has worked at the Building since 1979; an affidavit from the son of the prior owner who worked at the Building from 1979 to 2005; five affidavits from Building tenants; eight affidavits from Building employees; and affidavits from the Building’s; and

WHEREAS, the Appellant represents that after January 2013, Imperial Court’s policy was changed to conform to DOB’s interpretation and therefore rooms are rented and occupied for periods of no less than one month; and

WHEREAS, the applicant states that DOB has failed to produce documentation to support the assertion that the MDL ever restricted occupancy of rooms rented weekly to periods of 30 days or more; and

WHEREAS, the Appellant asserts that it has accrued a right to rent and occupy the SRO units on a weekly basis as of

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1943, and again in 1960, when the COs were issued based on compliance with the MDL then in effect; and

WHEREAS, as to the MDL Amendment, effective in 2011, which specifies that short-term residences may not be less than 30 days, the Appellant asserts that it applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant states that MDL § 366 (1) and (4) are savings clauses which dictate that the MDL provisions apply prospectively; specifically, MDL § 366(1) “the repeal of any provision this chapter, or the repeal of any provisions of any statute of the state or local law, ordinance, resolution or regulation shall not affect or impair any act done, offense committed or right accruing, accrued or acquired . . . prior to the time of such repeal, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent and in the same manner as if such provisions had not been repealed;” and (4) “No existing right or remedy of any kind shall be lost or impaired by reason of the adoption of this chapter as so amended unless by specific provision of a law which does not amend all articles of this chapter;” and

WHEREAS, the Appellant asserts that the MDL Amendment does not contain any “specific provision” that an existing right to rent for seven days or more has been “lost or impaired” as a result of the MDL Amendment therefore the “right” or the owner to rent units for periods of seven days or more may be continued; and

WHEREAS, the Appellant also cites to MDL § 13, which provides that “nothing . . . shall be construed to require any change in the construction, use or occupancy of any multiple dwelling lawfully occupied as such on April eighteenth, nineteen hundred twenty-nine, under the provisions of all local laws, ordinances, rules and regulations applicable thereto on such date; but should the occupancy of such dwelling be changed to any other kind or class after such date, such dwelling shall be required to comply with the provisions of section nine;” and

WHEREAS, the Appellant asserts that the Building was constructed as a “tenement” in 1906 and lawfully occupied on April 18, 1929, so nothing in the MDL requires any change in the use or occupancy of the Building; and

WHEREAS, the Appellant asserts that because the Building was operated in compliance with the MDL prior to the MDL Amendment, the use of the Building for stays of no less than one week may be continued; and

WHEREAS, accordingly, the Appellant states that if the Board determines that MDL § 248(16) applied both to rental and occupancy, then MDL § 366 would permit the Appellant to continue to rent the SRO Units for weekly occupancy; and DOB’s Position

WHEREAS, DOB asserts that its denial of the LNO request was proper for the following primary reasons: (1) the Building has a CO and the CO does not permit the Class A New Law tenement to be occupied for periods of less than 30 days; and (2) the MDL Amendment did not change DOB’s interpretation of the occupancy authorized by the CO, but rather clarified existing provisions related to occupancy of

Class A Multiple Dwellings; and

WHEREAS, DOB asserts that contrary to the Appellant’s arguments, the MDL never permitted weekly occupancy of the Building and the 1943 and 1960 COs are consistent with that position; and

WHEREAS, DOB asserts that the 1960 version of the MDL is applicable and not the 1939 version since the most recent CO (issued in 1960) resulted from a 1958 Alteration Application; however, both versions of the MDL distinguish transient occupancy from permanent occupancy and would therefore be consistent with DOB’s interpretation; and

WHEREAS, DOB notes that under both the 1939 MDL and the 1960 MDL, Class A use was distinguished from “transient” use; weekly occupancy is more appropriately associated with transient use; and

WHEREAS, thus DOB cites to the 1958-2011 text of MDL § 248 (16): “it shall be unlawful to *rent* [an SRO room] for less than a week.” (emphasis added); and

WHEREAS, DOB’s position is that the former MDL § 248 (16) restricts the payment term to a minimum of one week but does not similarly identify the minimum occupancy period; and

WHEREAS, DOB also notes that the term “occupancy” appears throughout the MDL and could have been used in lieu of “rental” if the weekly rental minimum requirement were intended to authorize weekly occupancy; and

WHEREAS, DOB asserts that the weekly rental provision of the 1939 Pack Bill explained that the bill’s weekly rental provision governed only rental payments and not occupancy; and

WHEREAS, DOB states that while there is no definition of the term “rental” in the MDL, the common understanding of the word is that it governs payment, and not occupancy and in the definition of “Class A” the MDL does not provide that it should be “rented” for permanent residence purposes, but uses the term “occupied;” and

WHEREAS, DOB states that there is nothing in the statute to suggest that rental and occupancy should be treated as equivalents; and

WHEREAS, DOB notes that in 1958, the MDL contained the term “permanent residence purposes” and defined a “Class A multiple dwelling as a multiple dwelling which is occupied, as a rule, for permanent residence purposes;” it defined a “Class B multiple dwelling” as “a multiple dwelling which is occupied as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals;” and

WHEREAS, DOB states that according to the 1960 CO, the building is a “New Law Tenement Class ‘A’ Multiple Dwelling and Single Room Occupancy” which means that it must be occupied as a Class A multiple dwelling which mandates occupancy be for “permanent residence purposes;” and

WHEREAS, DOB asserts that it is consistent with the principle of statutory construction that a statute or ordinance be construed as a whole and that its sections be considered together and with reference to each other; and

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WHEREAS, accordingly, DOB asserts that MDL § 248(16) must be read in conjunction with the MDL §§ 4(8) and (9) in effect in 1960 which define Class A and Class B occupancies; and

WHEREAS, DOB cites to MDL §§ 4(8) and (9) which define the terms “Class A” and “Class B” multiple dwellings, use the term “occupied,” and provide that a Class A multiple dwelling is to be occupied for “permanent residence purposes”, while a Class B multiple dwelling is to be occupied transiently;” and

WHEREAS, DOB notes that MDL § 248 states that “a dwelling occupied pursuant to [section 248] shall be deemed a Class A dwelling;” the definition of “single room occupancy in MDL § 4(16) further states that “When a class A multiple dwelling is used wholly or in part for a single room occupancy, it remains a Class A multiple dwelling;” and

WHEREAS, DOB states that according to MDL § 4 (8), a Class A multiple dwelling is to be occupied for “permanent residence purposes;” and

WHEREAS, DOB consulted Merriam Webster’s dictionary which defines the word “permanent” as “continuing or enduring without fundamental or marked change,” while the word “transient” is defined as “not lasting long” and “passing through or by a place with only a brief stay or sojourn;” and

WHEREAS, DOB states that the plain meaning of “permanent” resident cannot be construed to include a person who occupies a hotel room for only a week; and

WHEREAS, DOB asserts that common sense supports a conclusion that one does not become a permanent resident of a location by virtue of a one-week stay and that such stay is more consistent with a “transient” occupancy See Connors v. Boorstein, 4 N.Y. 2d 172, 175(1958) (interpreting statutory terms as matter of common sense.”); 440 East 102nd Street Corp. v. Murdock, 285 N.Y. 298, 309 (1941)(citing “common use and understanding” in defining statutory terms); Kupelian v. Andrews, 233 N.Y. 278, 284 (1922) (statutory terms construed in a manner consistent with “common experience”); and

WHEREAS, DOB notes that pursuant to NYC Charter § 643, DOB is the agency responsible for interpreting the MDL in the first instance and DOB has consistently interpreted Class A permanent residence to require a minimum occupancy of 30 days, treating Class A “permanent” occupancy as the equivalent of J-2 Building Code occupancy and Class B “transient” occupancy as the equivalent of J-1 day-to-day or weekly occupancy; and

WHEREAS, DOB asserts that its interpretation is consistent with the principles of statutory interpretation that a statute be interpreted consistent with common sense - in this case weekly turnover would not commonly be understood to be permanent occupancy – and that a statute must be construed as a whole such that MDL§ 248(16) which prohibits rental of any room in and Class A SRO for a period of less than one week must be interpreted in conjunction with MDL §§ 4(8) and (9) which define Class A and Class B occupancies in terms of occupancy and not rental; and

WHEREAS, DOB notes that single room occupancy units are suitable only for permanent residence purposes, because while MDL § 248 required some upgrades, there was no requirement that these units comply with the more stringent fire safety requirements applicable to transient units; and

WHEREAS, DOB also notes that MDL § 248 was enacted in 1939, during the Great Depression, when weekly rates might be preferred over daily rates which would likely result in a higher weekly cost and that weekly rates would be preferred to monthly rates, because those sums would be potentially easier for people to save than a higher monthly sum; and

WHEREAS, DOB states that the Court’s decision in City of New York v. 330 Continental LLC was not a decision on the merits and the Appellant’s citations are *dicta*; and

WHEREAS, DOB states that the decision issued in Continental was issued in response to the City’s request for a preliminary injunction to enjoin the defendants in that case from using the disputed premises transiently, pending final determination of the action of the case and that the excerpts cited from that case are non-binding *dicta* used to explain the court’s determination that the City had failed to establish a right to a preliminary injunction; and

WHEREAS, DOB notes that the court stated that, “[i]n view of the as-yet unresolved vagueness and ambiguity of the language of the MDL and the ZR that the City seeks to enforce, it cannot be said that the City has demonstrated a clear right to the drastic remedy of preliminary injunction;” the decision was not a final ruling on the case which ultimately settled with the defendants agreeing to use the subject premises for “permanent residence purposes” consistent with the City’s interpretation of the term, meaning for thirty consecutive days or longer; and

WHEREAS, DOB concludes that since the Continental litigation settled and since it was only a decision on the preliminary injunction motion and not a decision on the merits of the case, the City had no basis to appeal; the City then clarified this historical interpretation in Chapter 225 of the Laws of 2010; and

WHEREAS, as to the MDL Amendment, DOB asserts that the amendments contained in Chapter 225 of the Laws of 2010 (and the 1960 change to MDL § 248) did not change what had been its interpretation (for at least 40 years) of what “permanent residence purposes” meant, which was the occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more;” and

WHEREAS, DOB states that, instead, the purpose of the amendments was as stated in the law, a “clarification” of the DOB’s historical interpretation relating to occupancy of Class A multiple dwellings;” and

WHEREAS, DOB notes that the bill was enacted “to fulfill the original intent of the law as construed by enforcing agencies, including the New York City Department of Buildings” (See “New York State Senate Introducer’s memorandum in Support, reprinted in New York State Archives’ Legislative History/Bill Jacket for the Laws of 2010,

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Chapter 225); and

WHEREAS, finally, DOB notes that Section 8 of the amendments provides that it “shall apply to all buildings in existence on such effective date and to buildings constructed after such effective date;” therefore, as clarifying amendments, the amendments are not to be applied only prospectively; and

WHEREAS, DOB asserts that since the Building was required to be occupied permanently (for 30 days or more) both prior to Chapter 225 and after, no existing right to rent for seven or more days has been lost or impaired as a result of the MDL amendments and transient use which was never permitted cannot be continued pursuant to the MDL savings clauses; and

WHEREAS, DOB states that prior to the adoption of Chapter 225, MDL §§ 4(16) and 248(1), the Building was a Class A multiple dwelling subject to MDL § 4(8)’s requirement that it be occupied for permanent residence purposes with “permanent residence” meaning occupancy of 30 days or more and not weekly occupancy; and

WHEREAS, DOB notes that it issued violations for illegal transient occupancy prior to the 2011 enactment of the MDL Amendment; and

The Board’s Conclusion

WHEREAS, the Board agrees with DOB that the Multiple Dwelling Law and the Building’s COs never permitted occupancy of the premises for weekly stays, and therefore there is no “existing right or remedy that is lost,” and the MDL’s savings clauses do not apply; and

WHEREAS, the Board agrees that the provisions of the MDL must be read together and that (1) the CO classification of Class A SRO is informed by the definition of Class A occupancy as permanent occupancy; and (2) the internal MDL references, dictionary definitions, plain meaning, common sense, and the legislative intent all support DOB’s conclusion that permanent occupancy requires stays of periods of at least 30 days; and

WHEREAS, the Board agrees with DOB that the text in effect at the time of the 1960 CO issuance applies, but would reach the same conclusion even if the text in effect in 1943 applied; and

WHEREAS, the Board notes that although the relevant MDL text has been amended since 1939, the underlying principles, including common sense concepts of time and residency, have not been redefined and that a seven-day stay would have never satisfied a requirement for permanent occupancy; and

WHEREAS, the Board finds that the distinctions between Class A and Class B and permanent and transient were understood at the time the CO was issued and there is not any evidence that in 1943 or 1960, at the issuance of the COs, that DOB accepted a rental term of any less than a month; and

WHEREAS, the Board does not find support for the Appellant’s assertion that the MDL in effect in 1943 expressly or implicitly reflected that the SRO Units could be lawfully rented and occupied for weekly periods; and

WHEREAS, the Board does not see any indication in the legislative history that there was a greater need for transient (weekly) occupancy rather than for shorter payment terms; and

WHEREAS, further, the Board notes that DOB is the agency empowered to interpret the MDL in the first instance and that the MDL allows it to create greater restrictions; and

WHEREAS, the Board accepts DOB’s interpretation of the legislative history and finds that the Appellant’s focus on the fleeting goals of the World’s Fair, derived from trade organizations’ interests and the scholarly discussion of housing during the Great Depression is unpersuasive; and

WHEREAS, the Board notes that there are public policy reasons to require greater safety measures for transient or truly temporary accommodations and permanent accommodations and finds the fact that the Pack Bill only required that the Building comply with MDL § 248 is consistent with a finding that Class A SROs are a form of permanent occupancy rather than transient; and

WHEREAS, the Board notes that the 1939 amendments encouraged the improvement of conditions of buildings which had been built for one form of Class A permanent use but have been converted to another much denser Class A occupancy; and

WHEREAS, the Board notes that the issuance of the CO in 1960 with the occupancy classification of Class A for the first time – meaning permanent occupancy – supports DOB’s conclusion that the approval was reviewed pursuant to the 1958 MDL because if the owner at the time believed that the newly defined Class A classification changed the meaning of the operative MDL provisions then he would have had an interest in revising the classification of the Building rather than obtaining a new CO with the new Class A classification; and

WHEREAS, the Board notes that the Appellant contends that the issuance of a CO certifies that the Building “conforms substantially to the approved plans and specifications, and to the requirements of the building code and all other laws and ordinances, and of the rules and regulations of the Board of Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued” and that such reliance actually supports a conclusion that DOB issued the CO pursuant to the 1958 clarified text, which the owner would have been aware of; and

WHEREAS, the Board notes that the 1943 CO only identifies the building as a New Law Tenement and Single Room Occupancy but not also as Class A; and

WHEREAS, the Board notes that tenements are within the MDL § 4 definition of Class A; and

WHEREAS, the Board finds it logical to conclude that the 1943 CO classification and the 1960 CO classification had the same meaning, just as the 1939 MDL text and 1958 MDL text did; and

WHEREAS, the Board finds that all three discussed versions of the MDL support the point that there is a distinction between Class A and Class B occupancy in that

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Class A and its regulatory provisions apply to permanent occupancy and Class B applies to transient; and

WHEREAS, the Board notes that the 1946 MDL defined “single room occupancy” as the occupancy of a single room separated from all other rooms within an apartment in a multiple dwelling and that “[w]hen a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling;” and

WHEREAS, accordingly, accordingly, the Board finds that MDL § 248 clearly establishes SROs within the definition of Class A multiple dwellings and Class A multiple dwellings are to be occupied “as a rule for “permanent residence purposes,” which is not satisfied by stays of one week; and

WHEREAS, as to the MDL Amendment and the Appellant’s invocation of the savings clauses, the Board accepts DOB’s position that the amendment served to clarify language and clearly articulate the position that it had held for decades that permanent occupancy requires a minimum stay of 30 days; the Board does not see any support for a conclusion that a Class A SRO with a minimum seven-day term is a separate protected class of occupancy; and

WHEREAS, the Board agrees with DOB that no right was ever established or accrued for seven-day occupancy and thus there is no right to save; and

WHEREAS, the Board notes that the MDL Amendment does not allow property owners to maintain transient use with permanent use fire safety conditions; transient use must meet transient use requirements; and

WHEREAS, the Board finds that there has always been a necessary distinction between transient and permanent occupancy and that is furthered by the CO identification of Class A and Class B occupancies; and

WHEREAS, the Board notes that the Building was constructed and occupied for several decades as a New Law Tenement Multiple Dwelling and that it was converted to a New Law Tenement Class A Multiple Dwelling SRO building; in both iterations, the Building accommodated permanent occupancy, identified as Class A since 1960; based on the legislative history and the economic climate, DOB’s assertion that the rental payment system and not the need for more transient occupancy is the change which sparked the 1939 amendments and the Building’s conversion; and

WHEREAS, the Board notes that approximately one-quarter of the Building is occupied by the Statutory Units which are permanent tenancies; and

WHEREAS, the Board notes that the Appellant sought to gather additional Building occupancy records, but the Board does not find those records to be relevant because the Building was constructed as a Class A apartment building, and has since then had COs only for a Class A SRO, there is no basis to assert that it was actually a Class B use; and

WHEREAS, the Board does not find that evidence related to the occupancy of the Building is relevant to the interpretation of the MDL text; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB’s denial of a request for a Letter of

No Objection, which would authorize occupancy of the Building for a minimum period of seven days rather than 30 days.

Adopted by the Board of Standards and Appeals, June 10, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

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*CORRECTION

The resolution adopted on February 4, 2014, under Calendar No. 249-13-BZ and printed in Volume 99, Bulletin No. 6, is hereby corrected to read as follows:

249-13-BZ

CEQR #14-BSA-027K

APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.

SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to allow a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building, C4-3 zoning district.

PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 25, 2013, acting on Department of Buildings (“DOB”) Application No. 301509231, reads in pertinent part:

Proposed physical culture establishment is contrary to that allowed as-of-right under ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-3 zoning district, the operation of a physical culture establishment (“PCE”) on the second story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013 after due notice by publication in *The City Record*, with a continued hearing on January 14, 2014 and then to decision on February 4, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is an irregular lot located at the northeast corner of the intersection of Graham Avenue, Flushing Avenue, and Broadway, with a portion of the lot extending to Debevoise Street, within a C4-3 zoning district; and

WHEREAS, the site has 87.67 feet of frontage along Graham Avenue, 203.56 feet of frontage along Flushing Avenue, 38.75 feet of frontage along Broadway, 110 feet of

frontage along Debevoise Street, and 38,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story commercial building with 131,580 sq. ft. of floor area (3.4 FAR); and

WHEREAS, the PCE is proposed to occupy approximately 15,953 sq. ft. of floor area on the second story of the building; and

WHEREAS, the PCE will be operated as Crunch Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 11:00 p.m., and Sunday from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) whether any portion of the PCE was proposed on the first story; and (2) whether there were any residential uses in the subject building or in any adjacent buildings; and

WHEREAS, in response, the applicant clarified that although the PCE is accessed through a common commercial lobby on the first story, there is no PCE program space on the first story; in addition, the applicant represented that there are no residential uses in the subject building or in any adjacent building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA027K dated August 12, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

MINUTES

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C4-3 zoning district, the operation of a PCE on the second story of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 6, 2013” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 4, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 4, 2014.

The resolution has been amended to correct the Application No. which read: “301509923.” Now reads: “301509231”.

Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.

MINUTES

*CORRECTION

The resolution adopted on June 10, 2014, under Calendar No. 331-13-BZ and printed in Volume 99, Bulletin Nos. 22-24, is hereby corrected to read as follows:

331-13-BZ

CEQR #14-BSA-093K

APPLICANT – Warshaw Burstein, LLP, for Isaac Chera, owner; 2007 86th Street Fitness Group, LLP, lessee.

SUBJECT – Application December 31, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within the existing building at the Premises. C4-2 zoning district.

PREMISES AFFECTED – 2005 86th Street aka 2007 86th Street, north side of 86th street, west of its intersection with 20th Avenue, Block 6346, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 18, 2013, acting on DOB Application No. 320817345, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C4-2 zoning district pursuant to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of the application, on condition that: (1) the 85th Street side of the property is not used for entrance or egress; (2) the gate on the 85th Street side is secured at all times; and (3) additional bike racks on 86th Street are provided, if permitted by law; and

WHEREAS, the subject site is a through lot located on the block east of 20th Avenue between 85th Street and 86th Street, within a C4-2 zoning district; and

WHEREAS, the site has approximately 11 feet of frontage along 20th Avenue, 70 feet of frontage along 85th Street, 70 feet of frontage along 86th Street, and 14,330 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with a mezzanine; the building has a total of 13,990 sq. ft. of floor area (0.98 FAR); and

WHEREAS, the applicant states that it proposes to enlarge the mezzanine level by 3,550 sq. ft., resulting in a total building floor area of 17,540 sq. ft. (1.22 FAR); and

WHEREAS, the proposed PCE will occupy 16,880 sq. ft. of floor area – 12,540 sq. ft. of floor area on the first story and 4,340 sq. ft. of floor space on the mezzanine level; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board requested clarification regarding the proposed PCE’s use of the 85th Street entrance to the site; and

WHEREAS, in response, the applicant provided photographs showing that the 85th Street entrance to the site is enclosed with a gated fence; the applicant also represented that the PCE would not have an entrance on the 85th Street side of the building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA093K dated December 23, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

MINUTES

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C4-2 zoning district, the operation of a PCE in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 11, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

BULLETIN

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Tuesday, July 15, 2014**

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47-14-BZ	122-21 Merrick Boulevard, Queens
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DOCKETS

New Case Filed Up to July 15, 2014

149-14-BZ

3173 Bedford Avenue, East side of Bedford Avenue 400 feet North from Avenue K, Block 7607, Lot(s) 26, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a single family residence located in an R2 zoning district. R2 district.

150-14-BZ

30 Broad Street, Westerly side of Broad Street between Exchange Place and Beaver Street, Block 24, Lot(s) 29, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow the operation of a physical culture establishment/ health club in portions of the second floor and second floor mezzanine with an entrance at the ground level. C5-5 zoning district. C5-5 district.

151-14-BZ

19 West 21st Street, Northerly side of West 21st Street, 309' 10" westerly of Fifth Avenue, Block 823, Lot(s) 24, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment / yoga studio on a portion of the ground floor of the subject 12-story commercial building, located within C6-4A zoning district. C6-4A district.

152-14-BZ

673 Driggs Avenue, , Block 2382, Lot(s) 3, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to permit the construction of a new community facility building at the premises which would contain a for-profit school, the school at Fillmore Place for children ages two through six. R6B zoning district.. R6B district.

153-14-A

200 Cambridge Avenue, 114.71 feet north of intersection on of Auburn Avenue and Cambridge Avenue, Block 1511, Lot(s) 210, Borough of **Staten Island, Community Board: 1**. Proposed construction of a community facility building school located partially within the bed of a unbuilt mapped street pursuant to Article 3 Section 35 of the General City Law and waive of bulk regulations under ZR Section 72-01-(g) . R3-2 Zoning distr R3-2+R3X district.

154-14-BZ

6934 5th Avenue, Located on the northwest corner of the intersection of Ovingtonl Avenue and 5th Avenue, Block 5873, Lot(s) 57, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-621) to allow an addition to the existing mixed commercial and residential building. C1-3/R6B zoning district. C103/R6B district.

155-14-BZ

95 + 105 Ridgeway Avenue, East side of Ridgeway Avenue, Block 2610, Lot(s) 150, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit two proposed self-storage warehouses (UG 16) in an M1-1 zoning district with access provided through an R3-2 zoning district. M1 district.

156-14-BZ

1245 East 32nd Street, East side of East 32nd Street 350 feet, Block 7650, Lot(s) 27, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) to allow the enlargement of a single family residence in an R4 zoning district. R4 district.

157-14-BZ

1151 East 29th Street, east side of East 29th St. 360 feet north from the corner of Avenue L, Block 7629, Lot(s) 24, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a single family residence in an R2 zoning district. R2 district.

158-14-BZ

1178 East 27th Street, East side of east 27th Street 130 feet from the north side of Avenue L, Block 7627, Lot(s) 13, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a single family resident in an R2 zoning district. R2 district.

159-14-A

468 Arthur Kill Road, 249.79 feet west of intersection of Arthur Kill Road and Gifford's Lane, Block 5450, Lot(s) 35, Borough of **Staten Island, Community Board: 3**. Proposed construction of a garage within the bed of an mapped street pursuant Article 3 Section 35 of the General City Law. R3-1 Zoning District R3-1 district.

DOCKETS

160-14-A

120 Pemberton Avenue, 249.79 feet west of intersection of Arthur Kill Road and Gifford's Lane, Block 5450, Lot(s) 36, Borough of **Staten Island, Community Board: 3**. Proposed construction of a garage within the bed of a mapped street, pursuant Article 3 Section 35 of the General City Law. R3-1 Zoning district . R3-1 district.

161-14-A

464 Arthur Kill road, 249.79 feet west of intersection of Arthur Kill Road and Gifford's Lane, Block 5450, Lot(s) 37, Borough of **Staten Island, Community Board: 3**. Proposed construction of a garage within the bed of a mapped street contrary to Article 3 , Section 35 of the General City Law. R3-1 Zoning District R3-1 district.

162-14-A

100 Giegerich Avenue, West side Giegerich Avenue 431 .10 feet to Minerva Avenue, Block 7796, Lot(s) 11(tent), Borough of **Staten Island, Community Board: 3**. Proposed construction of a single family detached home that does not front on a legally mapped street contrary to Article 3 , Section 36 of the General City Law . R1-2 zoning district . R1-2 district.

163-14-A

502 Canal Street, Greenwich Street and Canal Street, Block 595, Lot(s) 40, Borough of **Manhattan, Community Board: 1**. Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A district.

164-14-A

504 Canal Street, Greenwich Street and Canal Street, Block 595, Lot(s) 39, Borough of **Manhattan, Community Board: 1**. Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A district.

165-14-A

506 Canal Street, Greenwich Street and Canal Street, Block 595, Lot(s) 38, Borough of **Manhattan, Community Board: 1**. Appeals seeking a waiver of Section G304. 1,2 of the NY Building code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A district.

166-14-BZ

12 West 27th Street, Southside of West 27th Street, 60.5 feet west of Broadway, Block 828, Lot(s) 56, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow for a physical culture establishment within portion of an existing mixed use building, located within an M1-6 zoning district. M1-6 district.

167-14-A

250 Manhattan Avenue, Manhattan Avenue, between Powers Avenue and Grand Street, Block 2782, Lot(s) 1, Borough of **Brooklyn, Community Board: 1**. Appeal seeking a determination that the owner has obtained a vested right to complete construction commenced under the prior C4-3(R6) zoning district. R6B zoning district . R6B district.

168-14-BZ

419 Lafayette Street, located on the east side of Lafayette Street between East 4th Street and Astor Place, Block 544, Lot(s) 13, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to allow the operation of a physical culture establishment (fitness center) with the existing building located within a M1-5B zoning district. M1-5B 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.

CALENARS

JULY 29, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 29, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

72-11-BZ

APPLICANT – Walter T. Gorman, P.E., for Tanner and Rothafel Partnership, owner; Lukoil, lessee.

SUBJECT – Application June 30, 2014 – to request an extension of time to get Certificate of Occupancy which expired October 25, 2012.

PREMISES AFFECTED – 101-06 Astoria Boulevard, southeast corner of 101st Street, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

140-92-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the enlargement of an existing school (UG3) which expired on January 26, 2014. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot(s) 10 and 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner.

SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize Affinia Gardens Hotel under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #8M

145-14-A

APPLICANT – Yuk Lam, for XU M Hui, owner.

SUBJECT – Application June 23, 2014 – GCL 36 Waiver:

Proposed four story building on Carlton Place, which is facing an unmapped street pursuant Article 3 Section 36 of the General City Law.

PREMISES AFFECTED – 136-16 Carlton Place, between Linden Place and Leavitt Street, Block 4960, Lot 62, Borough of Queens.

COMMUNITY BOARD #4Q

ZONING CALENDAR

271-13-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (23-141); side yard requirement (23-461) and less than the maximum rear yard (23-47). R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

315-13-BZ

APPLICANT – Law office of Stuart Klein, for Flywheel 415 Greenwich, LLC., owner.

SUBJECT – Application December 6, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Flywheel Sports*). C6-2A (TMU) zoning district.

PREMISES AFFECTED – 415-427 Greenwich Street, 12-18 Hubert Street & Laight Street, Block 215, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.

SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Brooklyn Athletic Club*) in a manufacturing zoning district. M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #1BK

CALENARS

5-14-BZ

APPLICANT - Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (23-141); side yards (23-461) and less than the required rear yard (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

40-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bill Stathakos, owner; Blink Fulton Street, Ink., lessee.

SUBJECT – Application March 4, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 1413/21 Fulton Street, north side of Fulton Street, 246 Ft. West of Tompkins Avenue, Block 1854, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #3BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 15, 2014
10:00 A.M.**

Present: Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

280-01-BZ

APPLICANT – Akerman, LLP, for S&M Enterprises, owner.

SUBJECT – Application April 25, 2014 – Extension of Time to Complete Construction and obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for construction of a mixed use building, which expires on May 7, 2014. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2nd Avenue, west side of 2nd Avenue between East 36th and East 37th Streets, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations Commissioner Ottley-Brown and former Chair Srinivasan; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application on condition that the site be designed so as not to negatively impact traffic flow; conditions include that curb cuts be on Second Avenue, the addition of any accessory parking spaces be within the building, and the location of the residential building service entrance be on East 37th Street, rather than Second Avenue; and

WHEREAS, the subject site is located on the west side of Second Avenue, between East 36th Street and East 37th Street, within a C1-9 zoning district; and

WHEREAS, on May 7, 2002, the Board granted a variance under the subject calendar number pursuant to ZR § 72-21, to permit the construction of a mixed-use building; and

WHEREAS, on September 24, 2002, the Board granted

an amendment to the resolution, under the subject calendar number; and

WHEREAS, on April 11, 2006, the Board granted an extension of time of four years to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 16, 2010, the Board granted an extension of time of four years to complete construction and obtain a certificate of occupancy;

WHEREAS, the applicant explains the need for additional time as being associated with financial concerns due to the economic climate from 2007 to 2011 led and new Metropolitan Transit Authority requirements for the disposition of development rights; and

WHEREAS, the applicant notes that the majority of the site is improved with a recessed roadway exit for the Queens-Midtown Tunnel; and

WHEREAS, the applicant represents that the conditions in the area have remained the same since the initial Board approval and thus the proposal, which provides a residential density that is within the as-of-right limits for C1-9 development, remains appropriate; and

WHEREAS, the applicant submitted photographs which reflect that the surrounding area today is consistent with the conditions at the time of the original grant; and

WHEREAS, the applicant has represented to the Community Board that its recommendations have all been incorporated into the proposal; and

WHEREAS, the Board inquired about whether the current parking lot use had all necessary licenses; and

WHEREAS, in response, the applicant submitted a copy of a license for a public parking lot issued by the Department of Consumer Affairs to expire on March 31, 2015; and

WHEREAS, the applicant noted that it must return to the Board for approval if it makes changes to the proposed tenancy or use of the building; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 7, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of four years from the date of the prior grant’s expiration, to expire on May 7, 2018; *on condition*:

THAT construction will be completed and a new certificate of occupancy shall be obtained by May 7, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

MINUTES

(DOB Application No. 102973926)

Adopted by the Board of Standards and Appeals July 15, 2014.

341-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owner.

SUBJECT – Application March 25, 2014 – Amendment of previously approved Variance (§72-21) which permitted retail stores (UG 6) on the first floor of an existing five story building. The amendment seeks to eliminate the term, which expires in April 8, 2023. R8B zoning district.

PREMISES AFFECTED – 231 East 58th Street, north side of East 58th Street between Second and Third Avenues, Block 1332, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a variance to eliminate the term for Use Group 6 retail use at the site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends disapproval of the request to eliminate the term; and

WHEREAS, the site is located on the north side of East 58th Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site is currently occupied by a five-story mixed residential and commercial building, with two retail stores on the first story, and residences on the second through fifth stories; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 4, 1967 when, under BSA Cal. No. 633-66-BZ, the Board granted a variance to permit the conversion of the first story from residential to Use Group 6 retail stores; the Board granted a 15-year term, to expire on January 4, 1982; and

WHEREAS, the grant expired on January 4, 1982, was reinstated under the subject calendar number on April 8, 2003, and the term extended on June 11, 2013 for ten years to expire on April 8, 2023; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant requests that the term be

eliminated for the following reasons: (1) there is an established commercial character in the area, (2) the commercial use is longstanding and functions well; and (3) there is a hardship in securing leases due to the limited term; and

WHEREAS, based upon its review of the record, the Board finds that the requested elimination of the term is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated April 8, 2003, to eliminate a term and specifically the April 8, 2023 expiration; *on condition* that any and all work will substantially conform to drawings associated with prior approvals; and *on further condition*:

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect and will be noted on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 121570460)

Adopted by the Board of Standards and Appeals, July 15, 2014.

765-50-BZ

APPLICANT – Kenneth H. Koons, for R.G. Ortiz Funeral Home, Ink., owner.

SUBJECT – Application April 14, 2014 – Extension of Term (§11-411) of an approved variance permitting an existing one-story funeral parlor, which expired on November 20, 2013. C1-2 zoning district.

PREMISES AFFECTED – 1430-36 Unionport Road, eastside 43 feet South of Olmstead Avenue, Block 3933, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over August 19, 2014, at 10 A.M., for continued hearing.

427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

COMMUNITY BOARD #14Q

MINUTES

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for adjourned hearing.

88-92-BZ

APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of an approved variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.

PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over August 19, 2014, at 10 A.M., for continued hearing.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184' east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for deferred decision.

186-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (UG 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

47-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Flatlands 78, L.L.C., owner.

SUBJECT – Application December 13, 2013 – Amendment of a previously approved Variance (§72-21) which permitted construction of a one-story and cellar retail drug store and five smaller stores with accessory parking. The amendment is seeking to remove the twenty-year term restriction imposed by the Board. C2-3/R5D & R5B zoning district.

PREMISES AFFECTED – 7802 Flatlands Avenue, corner and through lot located on the east side of Flatlands Avenue between East 78th Street and East 79th Street, Block 8015, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over August 19, 2014, at 10 A.M., for continued hearing.

24-03-BZ

APPLICANT – Warshaw Burstein, LLP, for Cumberland Farms, Ink, owner.

SUBJECT – Application February 26, 2014 – Extension of Term (§11-411) of a previously approved variance which permitted a gasoline service station and an automobile repair facility (UG 16) which expired on July 15, 2013; Waiver of the Rules. C1-2/R2A zoning district.

PREMISES AFFECTED – 178-02 Union turnpike, intersection formed by Union Turnpike and Surrey Parcel, Block 7227, Lot 29, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

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152-07-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph Dweck, owner.

SUBJECT – Application December 31, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a physical culture establishment (*Dolphin*) on the second floor of a two-story commercial building which expired on January 1, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on February 5, 2009; Waiver of the Rules. C4-2A zoning district.

PREMISES AFFECTED – 8701 4th Avenue, southwest corner of 4th Avenue and 87th Street, Block 6050, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over August 19, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

45-07-A

APPLICANT – Eric Palatnik, P.C., for Nader Kohanter, owner.

SUBJECT – Application April 25, 2014 – Application to permit an extension of time to complete construction and obtain a certificate of occupancy under the Common Law vested rights doctrine for a mixed-used residential community facility approved under the previous R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue "O" and Avenue "N", Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a two-story mixed residential and community facility building at the subject site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on west side of East 19th Street, between Avenue N and Avenue O, within an R4-1 zoning district; and

WHEREAS, the site has 35 feet of frontage along East

19th Street and 3,500 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a two-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 5,500 sq. ft. of floor area (1.49 FAR) and building height of 39'-2"; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that New Building Permit No. 302041261-01-NB was issued on March 9, 2006 (the "New Building Permit"), authorizing construction of the building in accordance with the R6 zoning district regulations; and

WHEREAS, on April 5, 2006 (the "Enactment Date"), the City Council voted to adopt the Midwood Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, the New Building Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and foundations were not complete; and

WHEREAS, on July 10, 2007, under the subject calendar number, the Board adopted a resolution recognizing that a vested right to continue construction under the New Building Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the New Building Permit for a term of four years, to expire on July 10, 2011; and

WHEREAS, the applicant states that, as of July 10, 2011, construction had not been completed and a certificate of occupancy had not been issued; accordingly, the applicant sought an extension of time to complete construction; at that time, the applicant represented that construction was delayed due to financing problems and its contractor going out of business; and

WHEREAS, on May 1, 2012, under the subject calendar number, the Board extended the time to complete construction and obtain a certificate of occupancy for a term of two years, to expire on May 1, 2014; and

WHEREAS, the applicant represents that as of May 1, 2014, construction had not been completed and a certificate of occupancy had not been issued; and

WHEREAS, the applicant notes that, since the Board's 2012 grant, no work has been performed and a new owner has taken control of the site; and

WHEREAS, consequently, the applicant now seeks an additional four-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 302041261-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the expiration date

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of the prior grant, to expire on May 1, 2016.

Adopted by the Board of Standards and Appeals, July 15, 2014.

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a six-story mixed residential and community facility building at the subject site; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014 and June 10, 2014, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn recommends disapproval of this application, citing concerns about the lack of maintenance of the site and its effect on nearby residents; and

WHEREAS, Assemblyman Steven Cymbrowitz provided testimony in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association provided testimony in opposition to this application; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition”; and

WHEREAS, the Opposition raised the following concerns with respect to the instant application: (1) that a “For Sale” sign has been posted at the site recently; (2) that the owner does not have the financing to complete the project; (3) that there are open Department of Buildings (“DOB”) and Environmental Control Board (“ECB”) violations at the site; (4) that the sidewalk along the perimeter of the building is in

disrepair; (5) that the site is a dumping ground; and (6) that the site negatively affects the quality of life and property values of the surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue S and East 16th Street, within an R4-1 zoning district; and

WHEREAS, the site has 85 feet of frontage along Avenue S, 95 feet of frontage along East 16th Street, and 8,075 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a six-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 25 dwelling units; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that New Building Permit No. 302054568-01-NB was issued on January 11, 2006 (the “New Building Permit”), authorizing construction of the building in accordance with the R6 zoning district regulations; and

WHEREAS, on February 15, 2006 (the “Enactment Date”), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, the New Building Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and foundations were not complete; and

WHEREAS, the applicant notes that by letter dated November 18, 2008, DOB acknowledged that the New Building Permit was lawfully issued; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board adopted a resolution recognizing that a vested right to continue construction under the New Building Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the New Building Permit for a term of four years, to expire on December 9, 2012; and

WHEREAS, the applicant represents that, subsequent to the 2008 grant, construction did not proceed due to insufficient financing; thus, as of December 9, 2012, construction had not been completed and a certificate of occupancy had not been issued for the building; and

WHEREAS, consequently, the applicant now seeks an additional two-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to: (1) demonstrate that financing has been secured to complete the project; (2) clarify the status of open violations; and (3) respond to the concerns of the Opposition regarding the disrepair of the sidewalk and the lack of maintenance at the site; and

WHEREAS, as to the financing, the applicant provided an affidavit from an owner of the site, which indicates that Besyata Investment Group has committed up to \$6,000,000 to complete construction of the building; and

WHEREAS, as to the open violations, the applicant represents that although the violating conditions have been

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eliminated, the fines have yet to be paid; as such, the violations remain open; and

WHEREAS, the applicant states that it will resolve all outstanding violations upon the renewal of the New Building Permit by the Board; and

WHEREAS, as to the disrepair of the sidewalk, the applicant states that because construction machinery must access the site by traversing the sidewalk, the sidewalk will not be repaired until the building is nearing completion; however, in the meantime, the broken concrete will be removed and hard gravel will be installed in order to provide a level walkway; and

WHEREAS, as to the maintenance of the site, the applicant provided an invoice and photographs of the site, which demonstrate that the site has been cleared of all debris and garbage; and

WHEREAS, as to the Opposition's concern regarding the "For Sale" at the site; in sum and substance, the Opposition is concerned that the applicant seeks renewal of the New Building Permit for the sole purpose of conveying the site to another developer, which the Opposition characterizes is inconsistent with the owner's statement that it has obtained financing to complete the building; and

WHEREAS, the Board notes, however, that under the common law doctrine of vested rights, such rights accrue not to a specific owner but rather to the real property itself; as such, a change in ownership—let alone an anticipated change in ownership or control—is not a basis for the Board to deny a request for an extension of time to complete construction; and

WHEREAS, likewise, the Board acknowledges the limitations on its authority to deny a request for an extension of time to complete construction where it has already recognized that the right to continue construction has vested, as set forth in Lefrak Forest Hills Corp. v Galvin, 40 AD2d 211, 217 [2d Dept 1972] affd, 32 NY2d 796, 298 NE2d 685 [1973]; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 302054568-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on July 15, 2016.

Adopted by the Board of Standards and Appeals, July 15, 2014.

80-11-A, 84-11-A & 85-11-A & 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

92-14-A

APPLICANT – Greenberg Traurig, LLP, for MTS Propco. LPC/Rockpoint Group, LLC, owner.

SUBJECT – Application May 2, 2014 – Variance pursuant to Multiple Dwelling Law Section 310(2)(c) to waive court requirements and legally required windows under MDL Sections 26 and 30 for the construction of a residential addition to an existing hotel . C6-7/C6-6(MID) zoning district.

PREMISES AFFECTED – 790 7th Avenue, West 51st Street, Broadway, West 52nd Street and 7th Avenue, Block 1023, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #10M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

103-14-A

APPLICANT – Akerman LLP, for 55 Eckford Lots LLC, owner.

SUBJECT – Application May 9, 2014 – Appeal seeking a determination that the owner has obtained a common law vested right to complete construction under the prior R6/M1-1 zoning district regulations. M1-2/R6B zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford bounded by Driggs Avenue to its north and Engert Avenue to its south, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

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ZONING CALENDAR

15-14-BZ

CEQR #14-BSA-103Q

APPLICANT – Davidoff Hatcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Ink., owner.

SUBJECT – Application January 24, 2014 – Variance (§72-21) to permit the enlargement of an existing school building (*Holy Cross Greek Orthodox Church*), contrary to floor area (§24-111), sky exposure plane (§24-54), and accessory parking spaces (§25-31). R2 zoning district.

PREMISES AFFECTED – 12-03 150th Street, southeast corner of 150th Street and 12th Avenue, Block 4517, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 27, 2014, acting on DOB Application No. 420927475, reads, in pertinent part:

1. Community facility floor area ratio contrary to ZR Section 24-111;
2. Sky-exposure plane contrary to ZR Section 24-54;
3. Number of parking spaces contrary to ZR Section 25-31;
4. Side yard contrary to ZR Section 24-35(a);
5. Lot coverage contrary to ZR Section 24-11;
6. Front yard contrary to ZR Section 24-34; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding floor area ratio (“FAR”), sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; and

WHEREAS, the application is brought on behalf of Greek Orthodox Community of Whitestone Holy Cross, Inc. (“Holy Cross”), a not-for-profit corporation, which owns and operates Valiotis Greek-American School (“Valiotis”), the existing school at the subject site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and

Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of the application, subject to the following conditions: (1) “One Way” signs are installed at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (2) “One Way” signs are installed indicating “Exit Only” on at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (3) staff will be required to park only in the church parking lot and not on the local streets; (4) all staff cars will be required to park in a predetermined area and stacked next to each other; (5) kindergarteners and first graders will be dismissed 15 minutes early; (6) Valiotis will pursue the installation of a Stop sign at the intersection of 150th Street and 12th Avenue; and (7) Valiotis, Community Board 7, and Councilman Vallone will continue to pursue a request for a crossing guard at the intersection of 150th Street and 12th Avenue; and

WHEREAS, Councilman Paul A. Vallone, submitted testimony in support of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of 12th Avenue and 150th Street, within an R2 zoning district; and

WHEREAS, the site has 125 feet of frontage along 12th Avenue, 100 feet of frontage along 150th Street, and 12,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story school (Use Group 3) with 5,870 sq. ft. of floor area (0.47 FAR) and a building height of 31'-11"; the building was completed in 2004, and, according to Certificate of Occupancy No. 400676559, includes: in the sub-cellar, a gymnasium, assembly space, a mechanical room, a kitchen, and accessory storage; on the cellar level, a child care center for up to 36 children; on the first story, classrooms, offices, and accessory storage; and at the attic level, accessory storage; the four required accessory off-street parking spaces for the building are provided across 12th Avenue in the Holy Cross church parking lot (Block 4516, Lot 1; formerly Block 4516, Lot 50), per restrictive declaration; and

WHEREAS, the applicant notes that an as-built survey revealed that the building was constructed with the following non-compliances: (1) a front yard depth of 14'-0" (a minimum front yard depth of 15'-0" is required, per ZR § 24-34); (2) two side yards with widths of 8'-0" (two side yards with minimum widths of 8'-0" and 10'-2" are required, per ZR § 24-35); and (3) a lot coverage of 66 percent (a maximum lot coverage of 60 percent is permitted, per ZR § 24-11); and

WHEREAS, the applicant now proposes to vertically and horizontally enlarge the building, resulting in a two-story building with 13,967 sq. ft. of floor area (1.11 FAR) and building height of 35'-0"; and

WHEREAS, the applicant states that the variance is requested to legalize the above-noted non-compliances, which are maintained in the enlarged portion of the building; in addition, the following new non-compliances are

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proposed: (1) an FAR of 1.11 is proposed (the maximum permitted FAR is 0.5 FAR, per ZR § 24-111); (2) a sky-exposure plane of less than 1-to-1 is proposed (a 1-to-1 sky-exposure plane is required, per ZR § 24-54); and (3) four accessory off-street parking spaces (a minimum of ten accessory parking spaces are required, per ZR § 25-31); and

WHEREAS, the applicant states that Valiotis began as an afternoon Greek School Afternoon Program with three students in 1977 and currently enrolls 180 students in nursery through third grade; the applicant notes that demand for Valiotis has increased sharply since 2008, when enrollment was approximately 30 students; and

WHEREAS, the applicant represents that 35 prospective students were turned away in the 2013-2014 school year because the existing facility is too small to accommodate them; further, approximately 50 students must occupy classroom space in temporary trailers in a nearby site; and

WHEREAS, the applicant states that the proposal would allow Holy Cross to institute a comprehensive elementary school curriculum, consisting of nursery through fifth grade, with a total enrollment of 250 students; and

WHEREAS, the applicant states that the proposed 7,937 sq-ft. enlargement includes the following: on the first story, a new library, a new science lab, a new classroom, and new boys' and girls' restrooms; and on the second story, a new classroom, a new computer room, a new art room, additional storage, and new boys' and girls' restrooms; and

WHEREAS, the applicant states that the following are the primary programmatic needs of Holy Cross, which necessitate the requested variances: (1) to accommodate the needs of its growing congregation of approximately 650 members, many of whom have children enrolled at Valiotis and would like to send them to the school for fourth and fifth grade; (2) to provide interdisciplinary teaching spaces (arts, information technology, and science) in order to prepare its students for modern intermediate and high school curricula; and (3) to provide sufficient space for Holy Cross' Greek School Afternoon and Sunday School programs; and

WHEREAS, the applicant states that there is a direct nexus between the requested waivers and the programmatic needs of Holy Cross; and

WHEREAS, in particular, the applicant asserts that a complying building could not provide adequate classroom and program space for Holy Cross; as noted above, Valiotis was built and received a certificate of occupancy despite several as-built non-compliances; thus, constructing a complying building would require costly demolition of substantial portions of the existing building, resulting in further reductions of program space; and

WHEREAS, as to the new non-compliances associated with the proposed enlargement (FAR, sky-exposure-plane, and parking), the applicant asserts that each is essential to constructing a space that will accommodate Holy Cross's needs; the FAR is necessary, as noted above, because the existing school is too small to accommodate even its existing student body (50 students must learn in temporary trailers); the

sky-exposure-plane waiver is necessary to provide sufficient headroom in a new classroom on the second story; the parking waiver is necessary because the existing building was constructed without parking and providing parking would require complete renovation and a substantial loss of program space; for example, if parking were to be located in the sub-cellar and/or cellar, Valiotis would be forced to give up portions of its gymnasium and child care center; and

WHEREAS, in addition, the applicant states, as noted above, that Valiotis has four designated parking spaces in the Holy Cross church parking lot across 12th Avenue; under the proposal, the number of designated spaces will be increased to ten; and

WHEREAS, accordingly, the applicant asserts that only the proposal will provide the necessary space for Holy Cross to achieve its programmatic needs at Valiotis; and

WHEREAS, the Board acknowledges that Holy Cross, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building and the site, when considered in conjunction with the programmatic needs of Holy Cross, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Holy Cross is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by one- and two-story residential and community facility uses; south of the site along 150th Street between 12th Road and the Cross Island Parkway, the built character reflects the area's zoning designations (C1-2 and C2-2), in that one- and two-story mixed residential and commercial buildings predominate; and

WHEREAS, the applicant notes that the proposed use exists and is permitted as-of-right in the subject R2 zoning district; and

WHEREAS, as such, the applicant contends that the proposed enlargement is entirely consistent with the use and bulk of the area; and

WHEREAS, the applicant states that the proposal was

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designed to be sensitive to the scale of the streetscapes along both 150th Street and 12th Avenue, in that it maintains the existing yards and provides complying wall and building heights; and

WHEREAS, as to adjacent uses, the applicant states that directly south of the site is a two-story community facility building, directly east of the site is an undeveloped lot with a width of 50 feet, directly north of the site (across 12th Avenue) is the parking lot for the Holy Cross church, and directly west of the site (across 150th Street) is a school; the applicant also notes that there is a two-story church north and west of the site, on the northwest corner of the intersection of 12th Avenue and 150th Street; and

WHEREAS, the applicant also notes that the site abuts an R3-2 zoning district, where the maximum permitted FAR for a community facility is 1.0 FAR, which is consistent with the proposed 1.11 FAR; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a site plan of the parking lot at Block 4516, Lot 1, which shows the proposed number of parking spaces, site circulation, and signage; and (2) clarify the proposed traffic mitigation and safety measures; and

WHEREAS, in response, the applicant provided the requested plan, which reflects the proposed parking lot circulation and signage, which includes a single entrance point (the 12th Avenue curb cut) and exit point (the 150th Street curb cut) for the lot; and

WHEREAS, as traffic mitigation and safety, the applicant states that security personnel will be assigned to the site during pickup and drop-off times, dismissal times for pre-kindergarten and kindergarten students will be staggered, and bus queuing and parking will be relocated from 150th Street to 12th Avenue; and

WHEREAS, accordingly, the Board finds that, in accordance with ZR § 72-21(c), this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of Holy Cross could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, per ZR § 72-21(d); and

WHEREAS, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Holy Cross' programmatic needs, in accordance with 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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State

Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding FAR, sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 21, 2014" – Nine (9) sheets; and "Received July 14, 2014" – One (1) sheet; and *on further condition*:

THAT the building parameters will be: two stories; a maximum building height of 35'-0"; a maximum of 13,967 sq. ft. of floor area (1.11 FAR); a minimum front yard depth of 14'-0"; two side yards with minimum widths of 8'-0"; and a maximum lot coverage of 66 percent, as illustrated on the BSA-approved plans;

THAT a deed restriction will be recorded against Block 4516, Lot 1 designating minimum of ten parking spaces for the school's use;

THAT "One Way" signs will be installed and maintained at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT "One Way" signs will be installed and maintained at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT the 12th Avenue curb cut will only be used for entering the parking lot and the 150th Street curb cut will only be used for exiting the parking lot, and signs reflecting these restrictions will be installed and maintained;

THAT Valiotis teachers and staff will be required to park only in the church parking lot and not on the local streets;

THAT the above conditions will be listed on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans are considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2014.

57-14-BZ

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CEQR

APPLICANT – The Law Office of Jay Goldstein, PLLC, for One NY Plaza Co. LLC, owner; Gear Fitness LLC d/b/a Retro Fitness, lessee.

SUBJECT – Application April 10, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*) in the sub-cellar and concourse level of a 50-story commercial building. C5-5(LM) zoning district.

PREMISES AFFECTED – 1 New York Plaza, 114-142 13 Broad Street, 13 South Street, 1-21 Water Street, 49-63 & 54-64 Whitehall Street, Block 4, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 9, 2014, acting on DOB Application No. 12809052, reads, in pertinent part:

Proposed use as a physical culture establishment, as defined by ZR 12-10, is not permitted as of right in C5-5 district according to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District (LM), the operation of a physical culture establishment (“PCE”) in portions of the sub-cellar and cellar levels of a 50-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located within the entire block bounded by Broad Street, South Street, Whitehall Street, and Water Street and is known as One New York Plaza; it is within a C5-5 (LM) zoning district; and

WHEREAS, the lot has an area of 111,382 sq. ft., with approximately 342 feet of frontage on Water Street, approximately 291 feet of frontage on Whitehall Street, approximately 334 feet of frontage on South Street, and approximately 362 feet of frontage on Broad Street; and

WHEREAS, the applicant states that the site is occupied by a 50-story commercial building with 1,941, 436 sq. ft. of floor area (17.4 FAR); and

WHEREAS, the proposed PCE will occupy 16, 987 sq.

ft. of floor space with 6,677 sq. ft. on the sub-cellar and 10,310 sq. ft. on the cellar level; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant represents that the services at the PCE include dance, aerobics, yoga, and Pilates in addition to cardiovascular exercise and weight training management equipment; and

WHEREAS, the hours of operation for the PCE will be Monday through Thursday 24 hours, Friday until 10:00 p.m., and Saturday and Sunday, from 6:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist (CEQR No. 14BSA1138M) dated May 5, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District, the operation of a PCE in portions of the sub-cellar and cellar level of a 50-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 5, 2014” Seven (7) – sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 15, 2024;

THAT there will be no change in ownership or

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operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2014.

311-12-BZ

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.
SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for adjourned hearing.

185-13-BZ

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

256-13-BZ thru 259-13-BZ

260-13-A thru 263-13-A

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – Variance (§72-21) to permit four detached and semi-detached homes, contrary to side yard (§23-461) and open area (§23-891) regulations, and bulk non-compliances resulting from the location of a mapped street (§23-45). The proposed buildings are also located within the bed of a mapped street, contrary to General City Law Section 35. R3-2 zoning district.

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PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to allow a physical culture (*Brick CrossFit*) on the ground floor and cellar of an existing 10-story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for continued hearing.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

277-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of a 12-story, 125 unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), base and building height (§23-633), and parking (§25-23). R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a three-story, six-unit residential building, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for deferred decision.

299-13-BZ

APPLICANT – Eric Palatnik, P.C., for David Gerstenfeld, owner; Michael Nejat, lessee.

SUBJECT – Application November 1, 2013 – Special Permit (§73-126) to allow the partial legalization and connection of two adjacent ambulatory diagnostic treatment health care facilities (UG4). R3-A zoning district.

PREMISES AFFECTED – 4299 Hylan Boulevard, between Thornycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39 & 41, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

COMMUNITY BOARD #8Q

MINUTES

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29,
2014, at 10 A.M., for decision, hearing closed.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney
Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special
Permit (§73-44) to reduce the required number of accessory
parking spaces from 346 to 272 spaces for a mixed use
building containing UG4 health care and UG 6 office uses.
C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka
1498, 1526, 1528, 1532-1538 Coney Island Avenue,
property occupies the northwest corner of Coney Island
Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40,
41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to July 22,
2014, at 10 A.M., for adjourned hearing.

36-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for
201 Pearl LLLC., owner; Soulcycle Maiden Lane, LLC.,
lessee.

SUBJECT – Application February 27, 2014 – Special
Permit (§73-36) to allow a physical culture establishment
(*Soulcycle*) within a mixed use. C5-5(LM) zoning district.

PREMISES AFFECTED – 101 Maiden Lane aka 201 Pearl
Street, northeast corner of Maiden Lane and Pearl Street,
Block 69, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29,
2014, at 10 A.M., for decision, hearing closed.

47-14-BZ

APPLICANT – John M. Marmora, Esq., for RKR
Properties, Inc., owner; McDonald's USA, LLC., lessee.

SUBJECT – Application March 26, 2014 – Special Permit
(§73-243) to allow for an eating and drinking establishment
(UG 6) (*McDonald's*) with an accessory drive-through
facility. C1-2/R5D zoning district.

PREMISES AFFECTED – 122-21 Merrick Boulevard,
northwest corner of Merrick Boulevard and Sunbury Road,
Block 12480, Lot(s) 32, 39, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to July 29,

2014, at 10 A.M., for continued hearing.

55-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for
RK&G Associates LLC., owner; 388 Athletic Club, LLC,
c/o Stah Real Estate Com., lessee.

SUBJECT – Application April 8, 2014 – Special Permit
(§73-36) to allow a physical culture establishment (388
Athletic Club) to operate on the fifth and sixth floors of a
new 53 Story commercial and residential building. C6-45
zoning district.

PREMISES AFFECTED – 388 Bridge Street, aka 141
Lawrence Street, Block 152, Lot 1001/06, Borough of
Brooklyn.

COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29,
2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

BULLETIN

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775-85-BZ 133-33 Brookville Boulevard, Queens
24-96-BZ 213 Madison Street, Manhattan
245-03-BZ 160-11 Willets Point Boulevard, Queens
248-03-BZ 215 West 23rd Street, Manhattan
997-84-BZ 798-804 Union Street, Brooklyn
169-93-BZ 246-248 West 80th Street, Manhattan
103-14-A 55 Eckford Street, Brooklyn
49-14-A 5655 Independence Street, Bronx
210-13-BZ 43-12 50th Street, Queens
39-14-BZ 97 Reade Street, Manhattan
78-11-BZ & 33-12-A 78-70 Winchester Boulevard, Queens
 thru 37-12-A
153-11-BZ 27-11 30th Avenue, Brooklyn
286-12-BZ 1925 Union Street, Brooklyn
298-13-BZ 11-11 131st Street, Queens
327-13-BZ 1504 Coney Island Avenue, Brooklyn
27-14-BZ 496 Broadway, Manhattan
133-14-BZ 175 Father Capodanno Boulevard, Staten Island
134-14-BZ 53 Doty Avenue, Staten Island
135-14-A 19 Sunnymeade Village, Staten Island
136-14-BZ 16 Mapleton Avenue, Staten Island
137-14-BZ 174 Kiswick Street, Staten Island
138-14-BZ 1099 Olympia Boulevard, Staten Island
139-14-BZ 555 Lincoln Avenue, Staten Island

Correction622

Affecting Calendar Numbers:

279-13-BZ 218-222 West 35th Street, Manhattan

DOCKETS

New Case Filed Up to July 22, 2014

169-14-BZ

325 Avenue Y, Southwest corner of Avenue Y between Shell Road and West 3rd Street, Brooklyn, NY, Block 7192, Lot(s) 46, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-19) to allow a community facility Use Group 3 school to occupy a portion of the first floor and the entirety of the 2nd third, and fourth floors, located within an M1-1 zoning district. M1-1SP district district.

170-14-BZ

652-662 Avenue of the Americas, Northeast corner of West 20th Street and Avenue of the Americas, Block 822, Lot(s) 1&8, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of the proposed Physical Culture Establishment on the first floor second & third floors, located within an C6-2-A, C6-4A zoning district. C6-2-A & C6-4A district.

171-14-A

235 Dixon Avenue, Corner of Dixon And Granite Avenue, Block 1172, Lot(s) 244, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family detached home on the site which a portion is located within the bed of a ,mapped street, pursuant to the General City Law 35.and requires a waiver under ZR Section 72-01(g). R3A district.

172-14-BZ

235 Dixon Avenue, Corner of Dixon and Granite avenue, Block 1172, Lot(s) 244, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) is requested to allow for the reduction in the required front yard fronting from 10 feet to 4 feet, located within an R3A zoning district. R3A district.

173-14-BZ

20 East 38th Street, On the southwest corner of Madison Avenue and East 38th Street, Block 867, Lot(s) 57, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment(martial arts center) in the cellar of an existing 16-story mixed-used residential and commercial building, located within an C5-2 zoning district. C5-2 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

AUGUST 19, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 19, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzhock, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction for a previously granted Variance (72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) which expired on March 23, 2014. M1-1 zoning district.

PREMISES AFFECTED – 1214 East 15th Street, between Avenue L and Locust Avenue, Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

68-91-BZ

APPLICANT –Warshaw Burstein, LLP, for Cumberland farms, Ink., owner.

SUBJECT – Application July 1, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance for the continued operation of an Automotive Service Station (*Gulf*) which expired on March 12, 2014; Waiver of the Rules. R5D/C1-2 and R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens

COMMUNITY BOARD #11Q

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

300-08-A

APPLICANT – Law office of Marvin B. Mitzner LLC, for Steven Baharestani, owner.

SUBJECT – Application April 24, 2014 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previously approved grant (9-story hotel) under the common law vested rights. M1-2 /R5-B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street between 39th and 40th Avenues, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

23-14-A

APPLICANT – Eric Palatnik, P.C., for Cheong Wing Chung & Guo Ying Zhang, owners.

SUBJECT – Application February 5, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district. R2-A zoning district.

PREMISES AFFECTED – 198-35 51st Avenue, 51st Avenue between Weeks Lane and 199th Street, Block 7374, Lot 13, Borough of Queens.

COMMUNITY BOARD #11Q

ZONING CALENDAR

222-13-BZ

APPLICANT – Eric Palatnik, P.C., for 2464 Coney Island Avenue, LLC, owner.

SUBJECT – Application July 23, 2013 – Special Permit (§73-44) to permit the reduction of the required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C8-1/R5 zoning district.

PREMISES AFFECTED – 2472 Coney Island Avenue, southeast corner of Coney Island Avenue and Avenue V, Block 7136, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

48-14-BZ

APPLICANT – Eric Palatnik, P.C., for Vlad Benjamin, owner.

SUBJECT – Application March 26, 2014 – Special Permit (§73-622) for the enlargement of an existing two story single family home which is contrary to floor area, lot coverage and open space (ZR 23-141). R3-1 zoning district.

PREMISES AFFECTED – 174 Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot 196, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

50-14-BZ

APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.

SUBJECT – Application April 1, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.

PREMISES AFFECTED – 825 Manhattan Avenue aka 181 Calyer Street, north side of Calyer Street, 25' west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #1BK

52-14-BZ

APPLICANT – Lewis Garfinkel, for Asher Fried, owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1339 East 28th Street, east side of East 28th Street, 320' south of Avenue M, Block 7664, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 22, 2014
10:00 A.M.**

Present: Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

391-80-BZ

APPLICANT – Sheldon Lobel, P.C., for The NY Community Hospital of Brooklyn, INK., owner.

SUBJECT – Application April 16, 2014 – Amendment of previously approved variance (§72-21) which permitted enlargement to an existing hospital building (*NY Community Hospital of Brooklyn*), contrary to bulk regulations. The Amendment seeks to enclose a ramp which increases the degree of lot coverage non-compliance. R7A zoning district.

PREMISES AFFECTED – 2525 Kings Highway, south side of Avenue O approximately 175 feet northeast of the intersection formed by Bedford Avenue and Kings Highway, Block 6772, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a variance to permit a minor enlargement; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, on condition that: (1) sound attenuation is provided; (2) the compactor is operated during daylight hours only; and (3) the gate enclosing the compactor area remains closed when the compactor is not operating; and

WHEREAS, this application is brought on behalf of the New York Community Hospital of Brooklyn (“NYCH”), which is a not-for-profit corporation and an affiliate of New York Presbyterian Hospital-Weill Medical College of Cornell University; and

WHEREAS, the subject site is a triangular lot bounded by Avenue O and Kings Highway, within an R7A zoning district; and

WHEREAS, the site has 13,471 sq. ft. of lot area and is occupied by a five-story hospital building with 52,632 sq. ft. of floor area (3.91 FAR); and

WHEREAS, the site has been under the Board’s jurisdiction since May 23, 1950, when, under BSA Cal. No. 70-50-A, the Board granted a variance under the 1916 Zoning Resolution to permit, in a residence use district, the brick enclosure of a ramp leading to the basement of an existing hospital and the construction of a fifth and sixth story and a penthouse; this grant extended at various times over the years to allow completion of construction; and

WHEREAS, on December 12, 1950, under BSA Cal. No. 538-50-A, the Board granted an appeal to permit an air-conditioning system with an equipment room on the roof; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 725-62-BZ, the Board granted a variance to permit, in an R6 zoning district, the enlargement of the existing four-story hospital building, contrary to the regulations for lot coverage, height and setback, sky-exposure plane, minimum dimensions of a court, and loading berths; and

WHEREAS, most recently, on October 7, 1980, under the subject calendar number, the Board granted a variance to permit the enlargement of the existing four-story hospital building contrary to the regulations for lot coverage, sky-exposure plane, rear yard equivalent, and loading berths; and

WHEREAS, the applicant now seeks to amend the grant to permit a minor enlargement that increase the degree of non-compliance with respect to lot coverage; the enlargement will be accomplished by infilling an existing court at the first through fifth stories and it will result in an increase in floor area from 52,632 sq. ft. (3.91 FAR) to 53,794 sq. ft. (3.99 FAR); and

WHEREAS, the applicant states that the enlarged portion of the building will accommodate storage areas, structural elements, and a trash compactor; and

WHEREAS, the applicant contends that NYCH requires the additional spaces and equipment in order to carry out its programmatic needs as teaching hospital; namely, the applicant states that NYCH must adhere to National Fire Protection Association (“NFPA”) standards; and

WHEREAS, the applicant represents that the proposed increases in floor area and floor space and the ability to compact refuse will enable the hospital to meet or exceed NFPA guidelines, resulting in improvements in building maintenance, patient care, and staff safety; and

WHEREAS, the Board acknowledges that the proposal will further NYCH’s programmatic needs; and

WHEREAS, at hearing, the Board directed the applicant to: (1) verify that the proposal complies with the applicable parking requirements; and (2) clarify the proposed sound attenuation measures for the compactor; and

WHEREAS, in response, the applicant stated that the proposal complies with applicable parking requirements and submitted plans depicting the proposed sound attenuation measures; and

WHEREAS, in addition, the applicant agrees to limit the hours of compacting to ordinary business hours; and

MINUTES

WHEREAS, based upon its review of the record, the Board finds that the proposed elimination of term is appropriate, with certain conditions, as noted below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 7, 1980, to permit the noted modifications, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received April 16, 2014' - nine (9) sheets; and *on further condition*:

THAT the floor area of the building will not exceed 53,794 sq. ft. (3.99 FAR);

THAT parking will be as reviewed and approved by DOB;

THAT compacting of refuse will be limited to daily, from 8:00 a.m. to 8:00 p.m.;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT DOB must 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."

Adopted by the Board of Standards and Appeals, July 22, 2014.

775-85-BZ

APPLICANT – Sheldon Lobel, P.C., for Ivy Cross Island Plaza, owner.

SUBJECT – Application December 18, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of a three-story office building, contrary to permitted height and use regulations, which expired on February 24, 2012; Amendment to modify the parking layout, eliminate buffering and eliminate the term; Waiver of the Rules. C1-3/R2 and R2 zoning district.

PREMISES AFFECTED – 133-33 Brookville Boulevard, triangular lot with frontages on Brookville Boulevard, Merrick Boulevard, 133rd Avenue and 243rd Street, Block 12980, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment to permit: (1) the continued operation, without a term, of an office building (Use Group 6) on a site partially within R2 zoning district and partially within an R2 (C1-3) zoning district; (2) certain site modifications, including the elimination of buffering; and (3) the elimination of the hours of operation restriction; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot with frontages along 133rd Avenue (248 feet), 243rd Street (51 feet), Brookville Boulevard (590 feet) and Merrick Boulevard (780 feet); and

WHEREAS, the site is located partially within R2 zoning district and partially within an R2 (C1-3) zoning district; historically, the R2 (C1-3) portion of the site was zoned R2 (C2-1); and

WHEREAS, the site has approximately 181,531 sq. ft. of lot area and is occupied by a three-story commercial building with 222,285 sq. ft. of floor area (1.22 FAR) and 245 unattended parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the site since February 24, 1987, when, under the subject calendar number, the Board granted a variance to permit, on a site partially within an R2 zoning district and partially within an R2 (C2-1) zoning district, the construction of a three-story office building utilizing an existing steel skeleton, which exceeded the maximum permitted height and did not comply with the use regulations, for a term of 25 years, to expire on February 24, 2012; in addition, 286 attended parking spaces were permitted under the grant as accessory to the office use; and

WHEREAS, the applicant states that, at the time of the grant, the northeast portion of the subject block (Tax Lots 45, 47, 49, 51, 53, 57, and 58, hereafter known as the "Outparcels") was occupied with homes; subsequent to the grant, the homes were demolished and the subject site's parking lot was expanded, increasing the number of spaces in the parking lot to approximately 420 (245 spaces on the site, 82 spaces in the R2 (C1-3) portion of the Outparcels, and 93 spaces in the R2 portion of the Outparcels); the applicant notes that although the owner of the subject site owns the Outparcels, they remain separate tax and zoning lots; and

WHEREAS, the applicant now requests an amendment to permit the following changes to the grant: (1) elimination of the 25-year term; (2) reduction in the number of parking spaces at the site, from 286 attended spaces, to 245 unattended spaces; (3) elimination of the buffering requirement between the site and the Outparcels; and (4) elimination of the hours of operation restriction, which limits the use of the building to Monday through Saturday, from :00 a.m. to 6:00 p.m.; and

WHEREAS, as to the term, the applicant contends that a variance term on a building of this scale presents an undue hardship on the owner's ability to conduct normal business in the commercial real estate market, in that it creates uncertainty with respect to both leasing and financing; and

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WHEREAS, as to the reduction in the number of parking spaces, the applicant states that although the number of spaces at the subject site is reduced, the number of available spaces for the uses in the building has increased by 175 spaces, owing to the use of the Outparcels for additional parking; and

WHEREAS, as to the elimination of buffering, the applicant states that buffering is unnecessary given the demolition of the homes on the Outparcels and their current use as parking for the subject building; and

WHEREAS, finally, as to the elimination of the hours of operation, the applicant states that requiring all office workers at the building to adhere to a strict 8:00 a.m. to 6:00 p.m. schedule is impractical for a building of this size with this diversity of tenants; likewise, the limitation is unnecessary, since the Outparcels no longer contain residential uses and the entire block is devoted office uses and buffered from nearby residential uses by streets; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) notify the surrounding neighbors of the request to eliminate the term; (2) enhance the landscaping around the perimeter of the site; and (3) provide information on the lighting of the parking lot; and

WHEREAS, in response, the applicant submitted proof that the tenants were notified and an amended site plan, which indicates that 16 street trees will be provided along 133rd Avenue, as well as a four- to six-foot uniform hedge barrier along 133rd Avenue and 243rd Street; and

WHEREAS, in addition, the applicant states that parking lot lights are directed downward and away from residential uses and are on timers, which adjust for different seasons; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, as adopted on February 24, 1987, to permit the noted modifications, including the elimination of the term and the elimination of the restrictions on the hours of operation, *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received July 8, 2014'- six (6) sheets; and *on further condition*:

THAT a minimum of 245 unattended parking spaces will be provided at the site;

THAT lighting will be directed down and away from residential uses;

THAT the site plan will be in accordance with the BSA-approved plans;

THAT all conditions from prior resolutions not waived herein by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 22, 2014.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184' east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the time to obtain a Certificate of Occupancy for an eating and drinking establishment (Use Group 6); and

WHEREAS, a public hearing was held on this application on April 11, 2014, after due notice by publication in the *City Record*, with continued hearings on May 13, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Ottley-Brown, Commissioner Montanez, and former Chair Srinivasan; and

WHEREAS, the site is located on the north side of Madison Street between Rutgers Street and Jefferson Street, within an R7-2 zoning district; and

WHEREAS, the site is currently occupied by an eating and drinking establishment (Use Group 6) operated as McDonald's; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 1955 when, under BSA Cal. No. 664-54-BZ, the Board granted a variance to permit the construction and maintenance of a commercial building (retail store) for a term of 15 years; and

WHEREAS, on October 7, 1997, under the subject calendar number, the Board granted an application to re-establish the variance, which lapsed in 1970; and

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WHEREAS, in 2004, the use of the subject premises was changed from a retail store to an eating and drinking establishment; and

WHEREAS, on November 18, 2008, the Board approved an amendment to legalize the change in use from a retail store (Use Group 6) to an eating and drinking establishment (Use Group 6) and to extend the term for a period of ten years to expire on October 7, 2017; and

WHEREAS, a condition of the grant was that an updated CO be obtained by May 18, 2009; and

WHEREAS, a CO has not been obtained; and

WHEREAS, at hearing, the Board directed the applicant to ensure that the signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant removed all non-complying signage including flags and banners; and

WHEREAS, the applicant submitted photographs that reflect the removal of the flags, banners, and support brackets that held them; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and grants an extension of time to obtain a Certificate of Occupancy, to expire on July 15, 2015; *on condition* that any and all use will substantially conform to drawings associated with the prior approval; and *on further condition*:

THAT the grant will expire on October 7, 2017;

THAT a rear yard no less than 11'-0" in depth will be provided in accordance with the BSA-approved plans and be maintained free and clear of debris and any other encroachments;

THAT the premises will be maintained clean and free of graffiti;

THAT all signage will comply with C1 zoning district regulations;

THAT the above conditions and all other relevant conditions from prior approvals will be listed on the certificate of occupancy;

THAT a certificate of occupancy will be obtained by July 15, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted. (DOB Application. No. 121682287)

Adopted by the Board of Standards and Appeals, July 22, 2014.

245-03-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for Allied Enterprises NY LLC, owner; McDonald's Real Estate Company, lessee.

SUBJECT – Application December 26, 2013 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (*McDonald's*), which expired on December 12, 2013. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on December 9, 2013; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 2014; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of the intersection of Francis Lewis Boulevard and Willets Point Boulevard, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (*McDonald's*), with a drive-through facility with a ten-vehicle reservoir capacity, and 15 accessory parking spaces; and

WHEREAS, on December 9, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the existing restaurant for a period of five years, to expire on December 9, 2008; and

WHEREAS, on February 10, 2009, the Board granted an extension of term, to expire on December 9, 2013; and

WHEREAS, the applicant now requests an additional five-year extension of term; and

WHEREAS, at hearing, the Board directed the applicant to remove all signage contrary to the approved plans and to restore the speed bump to the parking lot; and

WHEREAS, in response, the applicant provided a photograph, which demonstrates that all excessive signage has been removed; in addition, the applicant states that the speed bump will be restored; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is

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appropriate, so long as the restaurant complies with all conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens and amends* the resolution, dated December 9, 2003, so that as amended the resolution reads: “to extend the term for five years from December 9, 2013, to expire on December 9, 2018; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received April 22, 2014’- four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on December 9, 2018;

THAT all signage will comply with C1 zoning district regulations;

THAT there will be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect; and

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 401574060)

Adopted by the Board of Standards and Appeals, July 22, 2014.

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross & Ross, owner; Bally Total Fitness of Greater NY., lessee.

SUBJECT – Application April 28, 2004 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the operation of a Physical Culture Establishment (*Bally's Total Fitness*) which expired on May 10, 2014. C1-5/R8A & R7A zoning district.

PREMISES AFFECTED – 1915 Third Avenue, southeast corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Coney Island Avenue and Avenue P, within an R7A (C2-3) zoning district; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Third Avenue and East 106th Street, partially within a C1-5 (R8A) zoning district and partially within an R7A zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; the PCE occupies 10,137 sq. ft. of floor space in the cellar, 5,261 sq. ft. of floor area on the first story, and 11,189 sq. ft. of floor area on the second story, for a total PCE floor space within the building of 26,587 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since January 27, 2004, when, under the subject calendar number, the Board granted a variance to permit the operation of the PCE partially within a residence district, for a term of ten years, to expire on January 27, 2014; and

WHEREAS, on December 10, 2013, the Board granted an extension of term for the PCE, for a term of ten years, to expire on December 10, 2023; and

WHEREAS, the applicant notes that a condition of the 2013 grant was that a certificate of occupancy (“CO”) was to be obtained by May 10, 2014; however, as of that date, the CO had not been obtained; and

WHEREAS, accordingly, the applicant seeks an extension of time to obtain the CO; and

WHEREAS, the applicant represents that the issuance of the CO has been delayed because the building has not yet received a public assembly certificate of operation (“PA”); further, the issuance of the PA has been delayed by the requirement to provide a fire protection plan for the entire building; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens and amends* the resolution, dated January 27, 2004, so that as amended the resolution reads: “to grant an extension of the time to obtain a certificate of occupancy, to expire on January 22, 2015; *on condition*:

THAT a certificate of occupancy will be obtained by January 22, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

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Adopted by the Board of Standards and Appeals, July 22, 2014.

271-07-BZ

APPLICANT – Eric Palatnik, P.C., for 217 W.23rd Street LLC., owner; Crunch LLC, lessee.

SUBJECT – Application December 23, 2013 – Amendment of a special permit (§73-36) and variance (§72-21) authorizing a physical culture establishment (*Crunch*) by allowing a change in operator, Extension of Term, Extension of Time to obtain a Certificate of Occupancy, and Waiver of the Rules. C2-7A/R8A zoning district.

PREMISES AFFECTED – 215 West 23rd Street, north side of West 23rd Street, 118.75 ft. west of intersection of West 23rd Street and 7th Avenue, Block 773, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a physical culture establishment (“PCE”), which expires on September 19, 2015, an extension of time to obtain a certificate of occupancy, which expired on September 16, 2012, and an amendment to permit a change in operator; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 23rd Street, between Seventh Avenue and Eighth Avenue; and

WHEREAS, the subject site is occupied by a ten-story mixed residential and commercial building; and

WHEREAS, the PCE occupies a total of 31,809 sq. ft. of floor area, with 8,852 sq. ft. of floor area on the first floor, second floor, and cellar levels, respectively, and 5,253 sq. ft. of floor area on the cellar mezzanine level; and

WHEREAS, on September 16, 2008, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 and a variance pursuant to ZR § 72-21, to permit, on a site partially within an R8A zoning district and partially within a C2-7A zoning district, the legalization of a PCE on the first floor, second floor, cellar and cellar mezzanine level of the subject building, including

within the portions of the building solely within the R8A portion of the site, for a term of ten years, to expire on September 19, 2015; in addition, the grant provided that substantial construction was to be completed in accordance with ZR § 72-23; thus, a certificate of occupancy was to have been obtained within four years of the grant (September 16, 2012); and

WHEREAS, accordingly, the applicant seeks an extension of the term of the PCE special permit for ten years and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks approval to operate the PCE as Crunch instead of David Barton Gym, as set forth in the prior grant; and

WHEREAS, the applicant notes that there are no proposed changes to the configuration of the exercise equipment or the overall program of the PCE and that sound attenuation will be in accordance with the prior approved plans; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated September 16, 2008, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the date of this resolution and to grant an extension of time obtain a certificate of occupancy; *on condition* that any and all use will substantially conform to drawings associated with the prior approval; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on July 22, 2024;

THAT a certificate of occupancy will be obtained by July 22, 2015;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT the hours of operation will be limited to Monday through Friday from 5:30 a.m. to midnight; Saturday from 8:00 a.m. to 9:00 p.m., and Sunday from 5:00 a.m. to 11:00 p.m.; and

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 22, 2014.

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997-84-BZ

APPLICANT – Sheldon Lobel, P.C., for 222 Union Associates, owner.

SUBJECT – Application January 23, 2014 – Amendment (§11-413) to a previous variance for a public parking garage. The amendment would convert the building to mixed use, with retail (UG 6) on first floor and cellar, and residential (UG 2) on the second through sixth floors. R6A & C1-1/R6A zoning district.

PREMISES AFFECTED – 798-804 Union Street, 6th Avenue and 7th Avenue, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

169-93-BZ

APPLICANT – Law office of Fredrick A. Becker, for 2231 Associates LLC, owner; TSI West 80, LLC dba NY Sports Club, lessee.

SUBJECT – Application May 5, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 17, 2014. C4-6A/EC-3 zoning district.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

103-14-A

APPLICANT – Akerman LLP, for 55 Eckford Lots LLC, owner.

SUBJECT – Application May 9, 2014 – Appeal seeking a determination that the owner has obtained a common law vested right to complete construction under the prior R6/M1-1 zoning district regulations. M1-2/R6B zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford bounded by Driggs Avenue to its north and Engert Avenue to its south, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,

Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a 12-story mixed residential building at the subject site; and

WHEREAS, a public hearing was held on this application on June 8, 2004, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of Eckford Street, between Driggs Avenue and Engert Avenue, partially within an R6B/M1-2 (MX-8) zoning district and partially within an R6A/M1-2 (MX-8) zoning district, within a Special Mixed Use District; and

WHEREAS, the site has approximately 98 feet of frontage along Eckford Street and 10,440 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a 12-story residential (Use Group 2) building; and

WHEREAS, the site was formerly located within an R6/M1-1 zoning district; and

WHEREAS, on March 22, 2004, New Building Permit No. 301756319-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) authorizing construction of the building in accordance with the R6/M1-1 zoning district regulations; and

WHEREAS, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint Williamsburg Rezoning, which rezoned the site from R6/M1-1 to partially R6B/M1-2 (MX-8) and partially R6A/M1-2 (MX-8); and

WHEREAS, as of the Enactment Date, all work on the proposed building’s foundations had been completed; thus, per ZR §§ 11-331 and 11-332, the applicant had until May 11, 2007 to complete construction under the R6/M1-1 regulations and obtain a certificate of occupancy; and

WHEREAS, however, as of May 11, 2007, construction had not been completed and a certificate of occupancy had not been obtained; accordingly, the applicant filed for an extension of time to complete construction pursuant to ZR § 11-332; and

WHEREAS, on October 23, 2007, under BSA Cal. No. 157-07-BZY, the Board granted an extension of time to complete construction and obtain a certificate of occupancy pursuant to ZR § 11-332, for a term of two years, to expire on October 23, 2009; in its grant, the Board recognized that the New Building Permit was lawfully issued, and that, subsequent to such issuance, the applicant had completed 100 percent of the foundation, the steel frame for six of the 12 stories of the proposed building, and concrete slab floors for stories one through six; in addition, the Board recognized that during that same time period 17 percent of the expenditures

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for the development had been made; and

WHEREAS, however, as of October 23, 2009, construction had not been completed; and

WHEREAS, as such, on April 27, 2010, under BSA Cal. No. 157-07-BZY, the Board granted an additional extension of time to complete construction and obtain a certificate of occupancy, for a term of two years, to expire on April 27, 2012; the applicant notes that, subsequent to the 2007 grant, due to the financial crisis, no additional construction was completed and no additional expenditures were made; thus, the Board's 2010 grant was based on the same amount of construction and expenditures as the 2007 grant; and

WHEREAS, the applicant represents that as of April 27, 2012, construction had not been substantially completed and a certificate of occupancy had not been obtained; and

WHEREAS, the applicant notes that an application for an additional extension of time under ZR § 11-332 was not timely filed due to a change in ownership and financing difficulties; and

WHEREAS, accordingly, the applicant now seeks an extension of time to complete construction and obtain a certificate of occupancy under the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Text Enactment Date and the Rezoning Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated March 24, 2010, DOB states the New Building Permit was lawfully issued; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as noted above, the Board has recognized that substantial construction was performed and substantial expenditures were made subsequent to the issuance of the

New Building Permit and prior to the Enactment Date; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that the owner would incur a loss of \$2,469,352 if the building must be modified to comply with the R6B/M1-2 (MX-8) and R6A/M1-2 (MX-8) regulations; this amount represents that costs of redesigning and reconstructing the building (\$2,000,000) plus the value of the floor area lost under the new zoning regulations (\$269,352); and

WHEREAS, thus, the applicant asserts and the Board agrees that complying with the current zoning regulations would result in a serious loss to the owner; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 301756319-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on July 22, 2016.

Adopted by the Board of Standards and Appeals, July 22, 2014.

49-14-A

APPLICANT – Jesse Masyr, Esq of Fox Rothschild LLP, for Archdiocese of New York, owner.

SUBJECT – Application March 25, 2014 – Proposed enlargement to an existing community facility, contrary to General City Law Section 35. R1-1 zoning district.

PREMISES AFFECTED – 5655 Independence Street, Arlington Avenue to Palisade Avenue between West 256th Street and Sigma Place. Block 5947, Lot 120. Borough of Bronx.

COMMUNITY BOARD #8BX

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

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ZONING CALENDAR

210-13-BZ

CEQR #14-BSA-006Q

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of a physical culture establishment (*The Physique*). C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 6, 2013, acting on Department of Buildings Application No. 420465455, reads in pertinent part:

“Proposed physical culture establishment is not permitted in a C1-4/R7A zoning district as-of-right or by special permit;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-4(R7A) zoning district, the legalization of a physical culture establishment (PCE) in a former manufacturing building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of the application; and

WHEREAS, the Queens Borough President recommends approval of the application; and

WHEREAS, the site is located on the west side of 50th Street, between Roosevelt Avenue and 43rd Avenue and Queens Boulevard, with 102 feet of frontage on 50th Street, a depth of 100 feet and a total lot area of 10,463 sq. ft.; and

WHEREAS, the site is occupied by a one-story and basement building designed as a factory building, with 19,715 sq. ft. of floor area; and

WHEREAS, the PCE occupies 9-857 sq. ft. of floor area on the basement level and is operated as *Physique*; and

WHEREAS, the PCE has been in operation at the site since approximately 2003; and

WHEREAS, the applicant represents that the manufacturing building for dolls and doll clothing with accessory offices was built in approximately 1950, and was occupied by manufacturing use until the 1980s; and

WHEREAS, the applicant notes that in 1989, the first floor of the building was converted to a billiard hall (Use Group 8) while the basement continued to be used for manufacturing and storage (Use Group 17), as reflected on the 1989 Certificate of Occupancy; and

WHEREAS, the applicant states that some time prior to 2003, the basement level was converted to PCE use; and

WHEREAS, when the PCE use began at the site it was within a C2-2(R7-1) zoning district, where PCE’s area allowed pursuant to Board special permit under ZR § 73-36; and

WHEREAS, the applicant acknowledges that although a PCE would have been permitted under the prior zoning district regulations, the prior owner never sought a special permit from the Board; and

WHEREAS, on July 28, 2011, the site was rezoned from C2-2(R7-1) to C1-4(R7A), pursuant to the Sunnyside-Woodside rezoning; and

WHEREAS, neither PCEs nor billiard halls are permitted under the current zoning; and

WHEREAS, the applicant represents that there has not been a discontinuance of the non-conforming billiard use on the second floor and, thus it is a legal pre-existing non-conforming use; and

WHEREAS, accordingly, only the proposed legalization of the PCE use on the basement level is the subject of the application; and

WHEREAS, the applicant now seeks a variance to legalize the operation of the PCE because the special permit for a PCE is not available in the subject zoning district; and

WHEREAS, the building will not be enlarged or otherwise altered as a part of this proposal; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the existing building is obsolete; and (2) the layout and lack of street exposure; and

WHEREAS, as to the obsolescence of the building, the applicant states that the building was constructed in 1950 and designed to accommodate manufacturing uses on both floors and is thus incompatible with not only conforming uses such as Use Group 6 use, but even modern manufacturing use; and

WHEREAS, the applicant asserts that the layout and lack of street exposure prohibit the basement space from being used for conforming uses such as Use Group 6 retail; and

WHEREAS, specifically, the applicant states that due to the location of portions of the basement level being below grade, it has limited street level exposure or access to light and air; and

WHEREAS, the applicant notes that the site slopes gently down toward 43rd Avenue to the north creating an area with slightly more street exposure; however, this corner of the building is occupied by its stairwell and elevator core and would be cost prohibitive to reconfigure the building to create a space for a conforming use tenant by relocating the building’s core; and

WHEREAS, the applicant notes that local retail and

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service establishment uses are dependent on street visibility and direct access to attract customers and that need cannot be met with below grade space; and

WHEREAS, further, the applicant notes that the windows are located well below eye level of pedestrians and do not provide sufficient visibility for businesses located at the basement level; and

WHEREAS, the applicant asserts that the space is also not desirable for conforming use such as offices since there is very little access to light and air; and

WHEREAS, the applicant also notes that the size of the basement level is not conducive to confirming tenants because local retail and service establishments in the subject area of Queens generally occupy spaces that are less than 4,000 sq. ft.; and

WHEREAS, accordingly, since the basement level is more than twice that size, it would need to be subdivided into two or three smaller spaces to be marketable to a broader range of uses; and

WHEREAS, the applicant states that the building's layout with little street exposure and a circulation core that is located in the northeast corner of the building make the subdivision of the space impractical, if not impossible; and

WHEREAS, the applicant asserts that the requirements of a PCE use differ from those of conforming commercial uses in that the PCE does not require the same amount of street exposure, is better suited to a large open floor place, and does not require any significant capital expenditures to the manufacturing building to accommodate a fitness center; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the development of the property in conformance with the applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant initially submitted a feasibility study analyzing (1) retail use on the basement level and upper floor; and (2) the proposed PCE on the basement level and retail use on the upper floor; and

WHEREAS, at the Board's direction, the applicant also analyzed a community facility option; and

WHEREAS, the applicant concluded that neither conforming scenario resulted in a reasonable rate of return due to the inability to market the space for either of these uses and the inability to compensate for the costs of converting the building to conforming use; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject building's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed

use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, specifically, the applicant states that there will not be any change to the exterior of the building, which has existed at the site since 1950; and

WHEREAS, the applicant asserts that the surrounding area is characterized by a mix of retail and residential uses; and

WHEREAS, specifically, the site is located just north of two main commercial thoroughfares (Roosevelt Avenue and Queens Boulevard) and is among a wide range of commercial uses including drug stores, automotive repair shops and gas stations; and

WHEREAS, the applicant notes that the only other use in the building is the non-conforming billiard hall; and

WHEREAS, the applicant asserts that the PCE has occupied the site for more than ten years and is compatible with the billiard hall and with adjacent uses; and

WHEREAS, the applicant notes that at the inception of the PCE use at the site, it was within a zoning district in which the special permit was available, but due to the 2011 rezoning is no longer available; and

WHEREAS, specifically, the applicant asserts that adjacent residential uses to the north and west do not experience sound or vibrations from the PCE activities; and

WHEREAS, the applicant notes that there are open areas with widths of at least 20 feet that buffer the PCE from the buildings to the north and west; and

WHEREAS, additionally, the wall of the gym facing north does not have windows and the portion of the facility includes stairwells, reception desk, and locker rooms, which do not create noise or vibrations; and

WHEREAS, the applicant states that treadmills and cardio machines are located on the east portion of the facility facing the street and the PCE does not offer any classes such as spinning or aerobics, which are generally accompanied by loud music; and

WHEREAS, the applicant notes that the west-facing wall does have windows similar to the east ones facing the street, but smaller in size; and

WHEREAS, at the Board's request, the applicant will tint the west-facing windows to prevent interior light from shining outside; and

WHEREAS, the applicant notes that the site is within a commercial zoning district with a heavy traffic volume; and

WHEREAS, at the Board's request, the applicant removed the awning over the entrance; and

WHEREAS, the applicant provided a revised sign analysis and photographs that reflect that the signage complies; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 14BSA006Q, and dated January 20, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within a C1-4(R7A) zoning district, the legalization of a physical culture establishment (PCE) in a former manufacturing building, contrary to ZR § 32-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 12, 2014"- Four (4) sheets; and *on further condition:*

THAT there will be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the term of this grant will be limited to ten

years from the date of this grant, and will expire on July 22, 2024, subject to further renewal;

THAT, the hours of the physical culture establishment will be limited to Monday through Friday from 5:30 a.m. to 12:00 a.m.; Saturday from 7:00 a.m. to 9:00 p.m.; and Sunday from 7:00 a.m. to 6:00 p.m.;

THAT all signage at the site will comply with C1 zoning district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT a new certificate of occupancy be obtained within six months from the date of this grant, on January 22, 1015;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 22, 2014.

39-14-BZ

CEQR #14-BSA-125M

APPLICANT – Francis R. Angelino, Esq., for 97-101 Reade LLC and II LLC, owner; Exceed Fitness LLC, lessee.

SUBJECT – Application March 17, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Exceed Fitness*). C6-3A zoning district.

PREMISES AFFECTED – 97 Reade Street, between West Broadway and Church Street, Block 145, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 5, 2014, acting on DOB Application No. 121911306, reads, in pertinent part:

Proposed physical culture establishment in C6-3A is not permitted as of right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3A zoning district,

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within the Special Tribeca Mixed Use District and the SoHo Cast Iron Historic District, the operation of a physical culture establishment (“PCE”) in portions of the ground floor, cellar and sub-cellar of a seven-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Reade Street between West Broadway and Church Street, within a C6-3A zoning district, within the Special Tribeca Mixed Use District and the SoHo Cast Iron Historic District; and

WHEREAS, the site is occupied by a seven-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 1,977 sq. ft. of floor area on the ground floor, 2,119 sq. ft. of floor space in the cellar, and 1,353 sq. ft. of floor space in the sub-cellar, for a total PCE size of 5,449 sq. ft.; and

WHEREAS, the PCE will be operated as Exceed Fitness; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 9:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificates of No Effect, dated February 6, 2014, February 25, 2014 and March 7, 2014; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to clarify the proposed ADA-compliance and sound attenuation measures; the Board also inquired as to whether trainers will be permitted to access the PCE outside the proposed hours of operation; and

WHEREAS, in response, the applicant confirmed that the PCE will comply with the applicable provisions of the ADA and will have adequate sound attenuation; additionally, the applicant states that trainers will only use

the PCE during the proposed hours of operation; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist, CEQR No. 14-BSA-125M, dated March 17, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C6-3A zoning district, within the Special Tribeca Mixed Use District and the SoHo Cast Iron Historic District, the operation of a physical culture establishment (“PCE”) in portions of the ground floor, cellar and sub-cellar of a seven-story mixed residential and commercial building; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 22, 2014” (4) sheets and “Received April 16, 2014” (1) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 22, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board-approved plans;

THAT the hours of operation for the PCE will be limited to Monday through Friday, from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans; THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the

MINUTES

applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 22, 2014.

78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

153-11-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoros Parais, owner.

SUBJECT – Application September 21, 2011 – Reinstatement (§§11-411 & 11-412) to permit the continued operation of an automotive repair use (UG 16B); amendment to enlarge the existing one story building; Waiver of the Board's Rules. C1-3 zoning district.

PREMISES AFFECTED – 27-11 30th Avenue, between 27th Street and 39th Street. Block 575, Lot 23. Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

286-12-BZ

APPLICANT – Eric Palatnik, P.C., for People of Destiny Ministries International, Inc., owners.

SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story UG 4A House of Worship (*People of Destiny Church*), contrary to coverage ratio (§24-11),. R6 zoning district.

PREMISES AFFECTED – 1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue, Block 1399, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

298-13-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner.
SUBJECT – Application November 1, 2013 – Special Permit (§73-49) to permit 36 rooftop parking spaces, accessory to an an existing three story and cellar physical culture establishment (*Spa Castle*). M1-1 zoning district.
PREMISES AFFECTED – 11-11 131st Street, 11th Avenue between 131st and 132nd Street, Block 4011, Lot 24, Borough Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces from 346 to 272 spaces for a mixed use building containing UG4 health care and UG 6 office uses. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for continued hearing.

27-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 496 Broadway LLC., owner.

SUBJECT – Application February 7, 2014 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar, contrary to use regulations (§42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 496 Broadway, east side of Broadway between Broome Street and Spring Street, Block 483, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

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133-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

134-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 53 Doty Avenue, Block 3124, Lot 147, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

135-14-A

APPLICANT – Department of Housing Preservation and Development.

SUBJECT – Application June 16, 2014 – Waiver of Section 36, Article 3 of the General City Law, property is not fronting a mapped street. R3-1 Zoning District.

PREMISES AFFECTED – 19 Sunnymeade Village, Block 3122, Lot 174, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

136-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 16 Mapleton Avenue, block 3799, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

137-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 174 Kiswick Street, Block 3736, Lot 21, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

138-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 1099 Olympia Boulevard Block 3804, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

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139-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED –555 Lincoln Avenue, Block 3804, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

MINUTES

*CORRECTION

The resolution adopted on June 24, 2014, under Calendar No. 279-13-BZ and printed in Volume 99, Bulletin No. 26, is hereby corrected to read as follows:

279-13-BZ

CEQR #14-BSA-049M

APPLICANT – Warshaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the first through fourth floors of a new building to be constructed. C6-4M and M1-6 zoning districts.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150' West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 14, 2014, acting on DOB Application No. 121092744, reads, in pertinent part:

Proposed physical culture establishment located on zoning lot in C6-4 and M1-6 zoning districts is not permitted as-of-right pursuant to ZR Sections 32-10 and 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) in portions of the first through four stories of a proposed 37-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 24, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is a through lot with frontage on West 34th Street and West 35th Street, between Seventh Avenue and Eighth Avenue, partially within a C6-4M zoning district and partially within an M1-6 zoning district

within the Special Garment Center District; and

WHEREAS, the applicant confirmed that there are not any restrictions against the use within the subject M1-6 zoning district within the Special Garment Center District; and

WHEREAS, a 37-story commercial building is being constructed on the site and will have a total of 231,577 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy portions of the first through fourth floors; the remainder of these floors will be occupied by Use Group 10 retail; and

WHEREAS, the PCE will occupy 15,210 sq. ft. of floor area and will have its main entrance on West 35th Street within the M1-6 zoning district portion of the site; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA049M dated October 2, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

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Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73- to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, and first through third stories of a proposed 38-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 30, 2014” – Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 24, 2014.

The resolution has been amended. Corrected in Bulletin No. 30, Vo. 99, dated July 30, 2014.

BULLETIN

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August 6, 2014

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174-14-BZ

820 East 182nd Street, Southwest corner of Est 182nd And Southern Boulevard, Block 3111, Lot(s) 59, Borough of **Bronx, Community Board: 2**. Re-instatement (§11-411) of a previously approved variance permitting the operation an Automotive Service Station (UG 16B) with accessory uses which expired November 6, 1994; Waiver of the Rules. C1-4/R7-1 zoning district. C1-4 in R7-1 district.

175-14-BZ

1162 Broadway, East side of Broadway between W 27th Street and W 28th Street, Block 829, Lot(s) 28, Borough of **Manhattan, Community Board: 5**. Variance (§72-21) proposed the construction a new 14-story hotel building for a variance setback and side yard requirements, located with a M1-6 zoning district. M1-6 district.

176-14-BZ

1981 East 9th Street, East side between Avenue T and Avenue S, Block 7091, Lot(s) 66, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to legalize an existing two family residence to a one family frame residence located in an R5 zoning district. R5 in OPSZ district.

177-14-BZ

1038 Flatbush Avenue, 180'feet south of intersection of Flatbush Avenue and Regent Place, Block 5125, Lot(s) 60, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to allow a physical culture establishment(PCE) within a portions of an altered building, located within an C4-~~A~~/R6A zoning district. C4-~~A~~/R6A district.

178-14-BZ

263 McGuinness Boulevard, located at the southeastern intersection Kent Street and McGuinness Boulevard, Block 2559, Lot(s) 32, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district. R6A district.

179-14-BZ

1937 East 14th Street, East side of East 14th Street between Avenue S and Avenue T, Block 7293, Lot(s) 74, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to request a special permit to allow the conversion and enlargement of an existing two family residence to single family residence located in a R5 zoning district. R5 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDARS

SEPTEMBER 9, 2014, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 9, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

302-01-BZ

APPLICANT – Deirdre A. Carson, Esq. for Creston Avenue Realty LLC, owner.

SUBJECT – Application May 28, 2014 - Extension of Time to obtain a Certificate of Occupancy of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on December 11, 2013. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, West side of Creston Avenue between East 190th and East 191st Streets. Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #7BX

318-06-BZ

APPLICANT – Eric Palatnik, LLP for Sun Company Inc. (R&M), owner.

SUBJECT – Application August 9, 2013 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a automotive service station (UG 16B), which expired on May 22, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on November 22, 2007; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, Noreast corner of Astoria Boulevard and 49th Street. Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

193-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Vornado Realty Trust., owner; Soulcycle 384 Lafayette Street, LLC., lessee.

SUBJECT – Application March 11, 2014 – Amendment to permit the enlargement of a previously approved Special Permit (73-36) for a physical culture establishment (*SoulCycle*). M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street aka 692 Broadway and 2-20 East 4th Street, southwest corner of Lafayette Street and East 4th Street, Block 531m Kit 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

19-12-A

APPLICANT – Law Offices of Marvin B Mitzner, LLC., for 38-30 28th Street, LLC., owner.

SUBJECT – Application May 9, 2014 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28th Street, west side of 28th Street between 38th and 39th Avenues, Block 386, Lot 27, Borough of Queens.

COMMUNITY BOARD #1Q

278-13-A

APPLICANT – Slater & Beckerman, P.C., for 121 Varick St. Corp., owner.

SUBJECT – Application September 27, 2013 – Appeal of DOB determination that the advertising sign was not established as a lawful non-conforming use .M1-6 SHSD.

PREMISES AFFECTED – 121 Varick Street, southwest corner of Varick Street and Dominick Street, Block 578, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #2M

ZONING CALENDAR

8-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Oleg Saitskiy, owner.

SUBJECT – Application January 16, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141); side yards requirements (23-461) and less than the rear yard requirement (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1824 East 22nd Street, west side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

21-14-BZ

APPLICANT – Eric Palatnik, P.C., for FSJ Realty Group LLL., owner; Crunch Richmond Hill, LLC., lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Crunch Fitness*) contrary to §32-10. C2-4/R6A zoning district.

PREMISES AFFECTED – 115-02 Jamaica Avenue, southeast corner of Jamaica Avenue and 115th Street, Block 9305, Lot(s) 2 and 11, Borough of Queens.

CALENDARS

COMMUNITY BOARD #9Q

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141); side yard (ZR §23-461) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

123-14-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson LLP, for 855 MRU LLC., owner.

SUBJECT – Application June 3, 2014 – Special Permit (§73-36) to allow the operation of physical culture establishment in portion of the cellar and first floor of the existing building located within a C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 855 Avenue of the Americas, between 30th Street and 31st Street, Block 806, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 29, 2014
10:00 A.M.**

Present: Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

186-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (UG 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment to extend the term of a prior variance; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, with continued hearings on April 26, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Liberty Avenue and Brisbin Street within an R4 zoning district; and

WHEREAS, the site is occupied by three one-story warehouse buildings; and

WHEREAS, the Board has exercised jurisdiction over the site since May 19, 1998, when, under the subject calendar number, the Board granted a variance to permit, on a site within an R4 zoning district, the construction and maintenance of a one-story office/retail building (Use Group 6 and 16), which did not comply with the use regulations, for a term of five years, to expire on May 19, 2003; and

WHEREAS, the approval reflected a one-story building to be divided into three units; however, three attached buildings were constructed with three separate Certificates of Occupancy; and

WHEREAS, Lot 1 was approved for Use Group 6 occupancy, Lots 20 and 24 (formerly Lots 5 and 6, respectively) approved for Use Group 6 or Use Group 16 (warehouse); and

WHEREAS, the applicant now seeks a new term without any expiration; and

WHEREAS, as to the term, the applicant contends that a variance term on a building of this scale presents an undue hardship on the owner’s ability to conduct normal business in the commercial real estate market, in that it creates uncertainty with respect to both leasing and financing; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) eliminate all signage that exceeds C1 zoning district regulations; and (2) eliminate all graffiti; and

WHEREAS, the applicant submitted a sign analysis for each lot and photographs of the existing signage which will be replaced by C1 zoning district compliance and which will be brought into compliance with C1 zoning district regulations during any interim period before the new signs are installed; and

WHEREAS, the applicant submitted photographs which reflect the removal of all graffiti at the site; and

WHEREAS, the Board indicated at hearing that it would not support eliminating the term or a 15-year term; and

WHEREAS, accordingly, the applicant revised the request to seek a ten-year term which would provide greater flexibility than the prior five-year term with respect to negotiating leases with tenants; and

WHEREAS, the applicant notes that despite the lapse in term, there have not been any complaints filed with either the Community Board or DOB and that the subject use is in character with surrounding uses fronting on Liberty Avenue, a wide commercial street with numerous Use Group 6 and Use Group 16 uses; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, as adopted on May 19, 1998, to permit the noted extension of term for a period of ten years, *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received February 24, 2014’ - (3) sheets; and *on further condition*:

THAT the term will expire on July 29, 2024;

THAT the site plan will be in accordance with the BSA-approved plans;

THAT all conditions from prior resolutions, including the limitation on uses, not waived herein by the Board remain in effect and will be noted on the Certificate of Occupancy;

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THAT the above conditions will be noted on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 29, 2014.

47-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Flatlands 78, L.L.C., owner.

SUBJECT – Application December 13, 2013 – Amendment of a previously approved Variance (§72-21) which permitted construction of a one-story and cellar retail drug store and five smaller stores with accessory parking. The amendment is seeking to remove the twenty-year term restriction imposed by the Board. C2-3/R5D & R5B zoning district.

PREMISES AFFECTED – 7802 Flatlands Avenue, corner and through lot located on the east side of Flatlands Avenue between East 78th Street and East 79th Street, Block 8015, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a variance to eliminate the term for Use Group 6 retail use at the site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the request to eliminate the term; and

WHEREAS, the site has frontage on Flatlands Avenue, East 78th Street, and East 79th Street, located partially within an R5B zoning district and partially within a C2-3(R5D) zoning district; and

WHEREAS, the site is occupied by a one-story building with a drug store and four smaller stores; and

WHEREAS, the Board has exercised jurisdiction over the site since March 24, 1998 when, under the subject

calendar number, the Board granted a variance to permit the construction of a one-story building to be occupied by a drug store and five smaller stores with accessory parking (Use Group 6) in what was then partially within an R5 zoning district and partially within a C2-2 zoning district, for a 20-year term to expire on March 24, 2018; and

WHEREAS, the applicant represents that the DOB-approved plans are consistent with the Board-approved plans associated with the variance and depict a one-story and cellar building with 16,000 sq. ft. of floor area to be occupied by a drug store, five smaller retail stores, and an accessory parking area with 44 spaces and a loading berth; and

WHEREAS, the applicant notes that the prior grant’s resolution erroneously states one large store and six smaller stores, while the DOB plans correctly illustrate the one large store and five smaller stores; and

WHEREAS, the applicant represents that it is unable to locate the Board-approved plans to confirm the error regarding the number of stores; and

WHEREAS, the applicant also notes that of the total of six stores, it has merged two into one store, Flatlands Dental Care (1,941.5 sq. ft. of floor area); the remaining three smaller stores are occupied by Subway, Da Beauty Spa, and Panko Express (750 sq. ft., 966.5 sq. ft., and 916.5 sq. ft., respectfully); and the large store is occupied by Rite Aid drug store; and

WHEREAS, the applicant has submitted plans to reflect the current configuration and asserts that such configuration is in substantial compliance with the variance grant; and

WHEREAS, the applicant notes that in 2009, through the Flatbush Rezoning, the City Planning Commission rezoned the site from partially R5 and partially C2-2 to partially R5B and partially R5D/C2-3 zoning districts; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant requests that the term be eliminated for the following reasons: (1) the lease terms do not coincide with the variance term, which leads to uncertainty and difficulty obtaining leases, which typically last for 20 years for commercial uses; (2) many lessees, such as Rite Aid, prefer a longer lease with multiple options for extension; and (3) there is a hardship in securing leases due to the limited term; and

WHEREAS, based upon its review of the record, the Board finds that the requested elimination of the term is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated March 24, 1998, to eliminate a term and specifically the March 24, 2018 expiration; *on condition* that all work will substantially conform to drawings filed with this application marked “Received July 28, 2014”-(5) sheets; and *on further condition*:

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect and will be noted on the Certificate of Occupancy;

THAT this 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 300607840)

Adopted by the Board of Standards and Appeals, July 29, 2014.

24-03-BZ

APPLICANT – Warshaw Burstein, LLP, for Cumberland Farms, Ink, owner.

SUBJECT – Application February 26, 2014 – Extension of Term (§11-411) of a previously approved variance which permitted a gasoline service station and an automobile repair facility (UG 16) which expired on July 15, 2013; Waiver of the Rules. C1-2/R2A zoning district.

PREMISES AFFECTED – 178-02 Union turnpike, intersection formed by Union Turnpike and Surrey Parcel, Block 7227, Lot 29, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting an automotive service station, which expired on July 15, 2013; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Union Turnpike at the intersection with Surrey Place, within a C1-2(R2A) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since on July 23, 1946, under BSA Cal. No. 624-39-BZ, it granted an application to permit a gasoline service station, lubricatorium, and car wash in a business use district; and

WHEREAS, the grant was extended and amended at various times; on July 15, 2013, the Board reinstated the grant, under the subject calendar number for a term of ten years, to expire on July 15, 2013; and

WHEREAS, the applicant now seeks an additional extension of term; and

WHEREAS, at hearing, the Board raised concerns

about: (1) the sufficiency of the screening along the rear lot line; (2) the presence of a storage shed; and (3) the condition of the landscaping; and

WHEREAS, in response, the applicant stated: (1) that it would plant four evergreen trees in the southeast corner of the site to provide a noise/screening buffer in addition to the existing wall and fence along the rear lot line; (2) the shed, which is not visible to patrons and is screened by an opaque fence above a masonry wall, is required by the service station for storage of products due to the absence of storage space in the building; photos depicting the removal of the barbed wire; and (3) it will replace several dead trees along the site’s eastern lot line as well as replant grass in the southeastern corner; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, the Board has determined that the evidence in the record supports the finding required to be made under ZR § 11-411.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 15, 2003, so that as amended the resolution reads: “to permit the extension of the term of the variance for an additional ten years from July 15, 2013 expiring on July 15, 2023; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked “Received July 1, 2014” –(6) sheets; and on further condition:

THAT the term of the variance will expire on July 15, 2023;

THAT the premises will be maintained free of debris and graffiti;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 29, 2014.

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.

SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district. PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

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COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over August 19, 2014, at 10 A.M., for continued hearing.

427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Baron Properties III, Inc., owner.

SUBJECT – Application October 1, 2013 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (*Genesis Auto Town*) which expired on January 23, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2001; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, northwest corner of intersection of Northern Boulevard and 201st Street, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

140-92-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the enlargement of an existing school (UG3) which expired on January 26, 2014. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-21 Crescent Street, southerly

side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot(s) 10 and 36, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

72-11-BZ

APPLICANT – Walter T. Gorman, P.E., for Tanner and Rothafel Partnership, owner; Lukoil, lessee.

SUBJECT – Application June 30, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance for the continued operation of an Automotive Service Station (Getty) which expired on October 25, 2012; Waiver of the Rules. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, southeast corner of 101st Street, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

80-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district.

PREMISES AFFECTED – 335 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615218 read, in pertinent part:

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- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2nd means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement.

[MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 84-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez’ concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the “Opposition;” and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the “329 Building”), 333 East 9th Street (the “333 Building”), and 335 East 9th Street (the “335 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

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WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,625 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.8 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,625 sq. ft. to 8,556.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional

question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected

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by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and

extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL § 148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

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WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL §152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance

would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern

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about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5th Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5th Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5th Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to

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the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013

and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014"-(8) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

84-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 333 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #3M

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615192 read, in pertinent part:

- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total. Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2nd means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction

of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]

- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and

Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; and (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez’ concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the “Opposition;” and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

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WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the “329 Building”), 331 East 9th Street (the “331 Building”), and 335 East 9th Street (the “335 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,011 sq. ft. and a height of 54’-3””; there is also a one-story portion and a three-story portion of the building which result in a total floor area of 10,102.5 sq. ft. on the lot; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.8 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,011.1 sq. ft. to 7,942.9 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54’-3” to 67’-3” (the maximum permitted height is 75’-0”); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the “2012 Approval”); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot

comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waiver non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board’s waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board’s request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that “[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;” and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the

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335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and

reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL §148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window

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opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL § 152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

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WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5th Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5th Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5th Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related

to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed

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construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310,

unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014" -(8) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July

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29, 2014.

85-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 331 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615209 read, in pertinent part:

- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total. Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2nd means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are

non-complying, same shall be cited on plans. [MDL 149]

- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and

Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 20, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

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WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez' concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9th Street (the "329 Building"), 331 East 9th Street (the "331 Building"), and 333 East 9th Street (the "333 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,023.5 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,023.5sq. ft. to 7,954.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings;

and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been

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amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL § 148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to

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meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL §152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments;

and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes

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that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5th Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5th Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5th Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the

MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial

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justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the

requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014" -(8) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

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THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615227 read, in pertinent part:

- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total. Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2nd means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]

- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject four-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 85-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair

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Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez' concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition;" and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 16 feet of frontage along East 9th Street, a depth of 92.25 feet, and a total lot area of 1,476 sq. ft.; and

WHEREAS, the site is occupied by a four-story non-fireproof building with a total of four dwelling units; and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 331 East 9th Street (the "331 Building"), 333 East 9th Street (the "333 Building"), and 335 East 9th Street (the "335 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 4,006.5 sq. ft. and a height of 48'-0"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a fifth floor containing an additional 801.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to five; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 4,006.5 sq. ft. to 4,807.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 48'-0" to 60'-0" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL

§§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

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WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL §148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common

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areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL §152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run

parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and

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stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5th Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5th Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation

and complete demolition of apartments; (2) the construction notes on the East 5th Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the

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requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014"-(8) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-

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stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

304-13-A, 312-13-A and 313-13-A

APPLICANT – Simons & Wright, for 517 West 19th Street LLC, owner; David Zwirner, lessee; Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee; 531 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2/WCH special district.

PREMISES AFFECTED – 517-519, 521-525, 531 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lots 15, 19 and 22, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Appeals Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to three final determinations issued by the Department of Buildings (“DOB”); and

WHEREAS, the final determination with respect to the building located at 517 West 19th Street and Certificate of Occupancy No. 110362054 was issued on October 21, 2013, and states in pertinent part:

[t]he request to consider an art gallery as retail space in Group M occupancy (2008 Building Code classification) and not as an assembly Group A-3 occupancy is hereby denied; and

WHEREAS, the final determination with respect to the building located at 521 West 19th Street and DOB

Application No. 103825372 was issued on October 30, 2013, and states in pertinent part:

[t]he request to consider an art gallery as retail space in Group M occupancy (2008 Building Code classification) and not as an assembly Group A-3 occupancy is hereby denied; and

WHEREAS, the final determination with respect to the building located at 531 West 19th Street and Certificate of Occupancy No. 104404431 was issued on October 30, 2013, and states in pertinent part:

[t]he request to consider an art gallery as retail space in Group M occupancy (2008 Building Code classification) and not as an assembly Group A-3 occupancy is hereby denied; and

WHEREAS, hereafter these determinations are referred to as the Final Determinations; and

WHEREAS, a public hearing was held on this appeal on May 6, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 24, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the appeal is filed on behalf of the tenant of the three buildings, David Zwirner Gallery (the “Appellant” or the “Gallery”), which contends that DOB’s determinations were erroneous; and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the subject site comprises Tax Lots 22 (517 West 19th Street), 19 (521 West 19th Street, and 15 (531 West 19th Street); and

WHEREAS, the is site located within a C6-2 zoning district, within the Special West Chelsea District; it has 225 feet of frontage along West 19th Street, and approximately 20,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by three abutting buildings; Lot 22 is occupied by a one-story building, and Lots 19 and 15 are each occupied by a two-story building; and

WHEREAS, the Certificate of Occupancy (“CO”) for the building on Lot 22 (CO No. 110362054, issued October 30, 2009) authorizes the first story to be occupied as “Art Sales,” which the CO classifies as Use Group 6 and Occupancy Group M, and it establishes a maximum occupancy of 35 persons; and

WHEREAS, the CO for the building on Lot 19 (CO No. 103825372) is a temporary CO, which will expire on October 22, 2014; it authorizes the first story to be occupied as “Commercial Art Gallery,” which it classifies as Use Group 6C and Occupancy Group F-3, and it establishes a maximum occupancy of 128 persons; in addition, it authorizes accessory storage and offices for nine persons on the mezzanine and an accessory library and offices for three persons on the penthouse level; and

WHEREAS, the CO for the building on Lot 15 (CO No. 10440443) was issued on July 2, 2007; it authorizes the first

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and second stories to be occupied as “Art Sales,” “Offices,” and “Storage,” all of which it classifies as Use Group 6 and Occupancy Group “COM”; this CO establishes a maximum occupancy of 129 persons on the first story and 37 persons on the second story; and

WHEREAS, the Appellant represents that the buildings are connected by access openings and used both individually and conjunctively by the Gallery for the display and sale of art, art openings, and other events; and

PROCEDURAL HISTORY

WHEREAS, the Appellant states that in April 2012, it sought determinations from DOB confirming that none of the buildings at the site required the installation of a sprinkler system; in reviewing the requests, DOB determined that the COs for the buildings on Lots 22 and 15 should have been identified as assembly occupancies (F-3 under the 1968 Building Code) rather than as “Art Sales” occupancies (C under the 1968 Building Code); as such, DOB determined that the buildings failed to provide adequate egress, that the COs were issued in error, and that amended COs and Place of Assembly Certificates of Operation were required; and

WHEREAS, in addition, the Appellant states that DOB determined that although the Temporary CO for the building on Lot 19 correctly identifies the occupancy as assembly, the maximum number of persons permitted—the occupant load—was incorrectly calculated; as such, the building failed to provide adequate egress, the required Place of Assembly Certificate of Operation was never obtained, and the permit underlying the Temporary CO was subject to revocation; and

WHEREAS, in response, the Appellant filed a series of determination requests seeking reconsideration of the interpretation that the buildings were properly classified as assembly occupancies; these requests were denied by the Manhattan Borough Commissioner on February 5, 2013, and by the First Deputy Commissioner in October 2013, resulting in the issuance of the Final Determinations; and

WHEREAS, the Appellant then timely filed this appeal; and

WHEREAS, accordingly, the question on appeal is whether the Gallery at the site is, as DOB asserts, an assembly occupancy, or, as the Appellant asserts, a mercantile occupancy; and

DISCUSSION

A. THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that the Final Determinations are erroneous in that they: (1) classify the buildings on Lots 15 and 22 as assembly occupancies even though the buildings are primarily used for art sales; (2) fail to comply with the code requirement to calculate the occupant load for all three buildings based on actual usage; and (3) include reference to the 1938 Building Code despite the fact that none of the buildings was altered under the 1938 Building Code; and

WHEREAS, in the alternative, the Appellant contends that providing a second means of egress for the building located on Lot 19 is a sufficiently safe alternative to changing the classifications of the buildings on Lots 15 and 22 and

obtaining Place of Assembly Certificates of Operation for all three buildings at the site; and

WHEREAS, the Appellant states that, per 1968 Building Code § 27-239, “every building hereafter erected or altered . . . shall be classified in one of the occupancy groups listed in Table 3-1 according to the main use or dominant occupancy of the building”; and

WHEREAS, the Appellant contends that the final determinations do not reflect that DOB complied with this provision; rather, the Appellant states that DOB classifies the buildings as “galleries” because they are tenanted by the David Zwirner Gallery and galleries appear in 1968 Building Code Table 3-2 as an illustrative example of an assembly occupancy; and

WHEREAS, the Appellant notes that the other F-3 occupancies provided in 1968 Building Code Table 3-2 (exhibition halls, gymnasias, museums, passenger terminals, bowling alleys, and skating rinks) are categorically distinct from the day-to-day operations of the buildings that comprise the David Zwirner Gallery; and

WHEREAS, the Appellant states that the Gallery is a place to purchase art; thus, it is primarily a mercantile occupancy rather than assembly occupancy and the usage of the term “gallery” is to connote the high-end nature of the business, akin to certain retail establishments that sell expensive jewelry under trade names including the word “gallery”; and

WHEREAS, the Appellant notes that 1968 Building Code § 27-232 defines an “assembly space” as “any part of a place of assembly, exclusive of a stage, that is occupied by numbers of persons during the major period of occupancy” and a “place of assembly” as “an enclosed room or space in which seventy-five or more persons gather for religious, recreational, educational, political or social purposes, for the consumption of food or drink, or for similar group activities or which is designed for use by seventy-five or more persons gathered for any of the above reasons”; and

WHEREAS, the Appellant asserts that neither definition supports classification of a gallery where art sales occur as an inherently assembly occupancy; the Appellant states that the buildings are not designed or used as a space to gather but rather as a space to sell art; and

WHEREAS, the Appellant observes that, per 1968 Building Code § 27-257, F-3 occupancies are characterized by occupancies in which persons are “physically active and do not have a common center of attention” and contrasts this description with the actual use of the Gallery, which the Appellant represents does not include physical activity and does include a narrow center of attention (pieces of art); and

WHEREAS, the Appellant notes that 1968 Building Code § 27-232 omits the words “retail” and “sales” from its list of activities for which people gather, which it states implies that retail and assembly uses are mutually exclusive; thus, because the buildings are primarily intended to facilitate sales of art, they are properly classified as mercantile occupancies; and

WHEREAS, further, the Appellant notes that 1968

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Building Code § 27-248 indicates that “buildings and spaces shall be classified in the mercantile occupancy group when they are used for display and sales of goods accessible to public inspection” and that 2008 Building Code § 309.1 provides that mercantile group M includes “retail” and “sales rooms”; thus, because the Gallery is engaged in a retail business, the occupancy of the buildings is by definition mercantile; and

WHEREAS, in support of this assertion, the Appellant represents that the Gallery sold approximately 2,025 works of art during the years 2010-2012 and that it sells approximately 750 art books per year; therefore, the Appellant contends that the buildings are primarily used for selling goods and thus properly categorized as mercantile occupancies; and

WHEREAS, to further support its assertion that the proper classification of the buildings is mercantile, the Appellant submitted a table reflecting that eight nearby art galleries have COs that do not classify the occupancy as F-3 or A-3; the COs range in issuance date from 2001 to 2014 and reflect a variety of use and occupancy descriptions; accordingly, the Appellant asserts that DOB has previously classified art galleries as mercantile and it is arbitrarily declining to classify the buildings on Lots 22 and 15 as mercantile in this case; and

WHEREAS, in addition, the Appellant states that the Final Determinations contain erroneous occupant load calculations, which result in occupant loads in excess of 74 persons per building and trigger the requirement to provide a second means of egress from each building and Place of Assembly Certificates of Operation for each building; and

WHEREAS, the Appellant states that, pursuant to 1968 Building Code § 27-358(b), “when the actual occupant load of any space will be significantly lower than that listed in Table 6-2, the commissioner may establish a lower basis for determination of occupant load”; thus, the typical occupancy of the buildings, which, the Appellant estimates is five to ten persons for the entire site per day, must be considered rather than the buildings’ capacity based on their floor area; and

WHEREAS, the Appellant asserts that the Final Determinations for the buildings located on Lots 22 and 15 erroneously employ the 1938 Building Code for the calculation of the required occupant load despite the fact that the permit applications were filed to comply with the applicable provisions of the 1968 Building Code; therefore, these final determinations are defective as a matter of law; and

WHEREAS, the Appellant also states that DOB cannot clarify the rationale for its Final Determinations on appeal; and

WHEREAS, accordingly, the Appellant requests that the Board grant the appeal, reverse the Final Determinations, and declare that Place of Assembly Certificates of Operation are not required for any of the buildings, including the building located on Lot 19; and

WHEREAS, finally, at hearing and in its final submission, the Appellant advanced alternative proposal in which the buildings on Lots 22 and 15 remain mercantile and the building on Lot 19 retains its classification as assembly but

is altered to include a second means of egress; and

WHEREAS, the Appellant represents that because the buildings essentially operate as a single facility, four means of egress (one each from the buildings on Lots 22 and 15 and two from the building on Lot 19) is a sufficiently safe condition regardless of whether the facility is classified as mercantile or assembly; and

WHEREAS, thus, the Appellant alternatively requests that the Board grant the appeal subject to the inclusion of a second means of egress from the building on Lot 19; and

B. DOB’S POSITION

WHEREAS, DOB contends that that the Final Determinations were properly issued, in that: (1) each of the three buildings at the site is an assembly occupancy; and (2) the occupant load calculations indicate each building has an occupant load in excess of 74 persons, triggering the requirement to obtain a Place of Assembly Certificate of Operation; and

WHEREAS, DOB contends that the proper classification of all three buildings at the site is assembly; thus, to the extent that DOB has issued COs classifying the occupancy at the buildings on Lots 22 and 15 as other than assembly, it did so erroneously; and

WHEREAS, DOB asserts that the only applicable occupancy group for the Gallery under the 1968 Building Code and 2008 Building Code is the assembly occupancy, which includes art gallery occupancies; and

WHEREAS, DOB notes that 1968 Building Code § 27-241 directs an applicant to Table 3-2 and Reference Standard RS 3-3 for the list of representative occupancies that must be used as a basis for classifying buildings and spaces by occupancy; and

WHEREAS, DOB states that 1968 Building Code Table 3-2 identifies “galleries” as representative of the assembly occupancy group with the F-3 designation and Reference Standard RS 3-3 lists “art galleries” as belonging to the assembly Occupancy Group F-3; thus, DOB asserts that an “art gallery” occupancy is expressly categorized in the assembly occupancy group; and

WHEREAS, in addition, DOB states that an art gallery is consistent with the descriptions of assembly occupancy under 1968 Building Code §§ 27-254 and 27-257; and

WHEREAS, DOB observes that 1968 Building Code § 27-254 provides that buildings and spaces shall be classified in the assembly occupancy group when they are designed for use by any number of persons for recreational or social purposes or for similar group activities; DOB contends that art galleries are designed to accommodate people convened to view and buy artwork and therefore belong in the assembly category per § 27-254; likewise, 1968 Building Code § 27-257 provides that occupancy group F-3 shall include buildings and spaces in which the persons assembled are physically active and do not have a common center of attention; DOB contends that this description is suitable for art galleries, where viewers walk through the gallery spaces and direct their attention to various exhibits; and

WHEREAS, as to the 2008 Building Code, DOB notes

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that § BC 303 specifically lists “art galleries” among the A-3 assembly uses and § BC 303.1 provides that Assembly Group A includes the use of a building or portion thereof for the gathering together of any number of persons for purposes such as social functions, recreation or similar group activities; and

WHEREAS, thus, DOB asserts that art galleries are categorized in the assembly occupancy group by the specific and general descriptions of the 1968 and 2008 Building Codes; thus, DOB properly concluded that all three buildings at the site are F-3 assembly occupancies; and

WHEREAS, DOB notes that the appellant disavows the label used on the davidzwiner.com website (which describes the site as “a contemporary art gallery”) and disregards the plain meaning of the term “art gallery” as an establishment that displays and sells works of art; and

WHEREAS, DOB also observes that neither the 1968 Building Code nor the 2008 Building Code uses the term “art sales establishment”; thus, DOB states that there is no support for the Appellant’s classification of the buildings using that term; and

WHEREAS, DOB notes that the Appellant does not dispute that the buildings are used to display and sell art, and does not distinguish the activities at the site from those typical of art galleries; and

WHEREAS, DOB states that the concept that art gallery assembly occupancies should be classified as “art sales” mercantile occupancies must be rejected because art galleries do not have the degree of openness and organization of displays found in most mercantile occupancies that alleviate risks to life safety; and

WHEREAS, rather, DOB states that the arrangement, darkened spaces, opportunity for congestion and density of occupant loads associated with art galleries and other occupancies classified in the assembly group category creates a potential for fatality and injury from fire that is comparatively high; thus, building code limitations are generally more restrictive for assembly occupancies than for other group classifications; and

WHEREAS, similarly, DOB contends that the diversity of displays in the David Zwiner Gallery during recent exhibitions reveals their dissimilarity to the orderly displays of department store, drug store and convenience store mercantile occupancies; these displays include the following: (1) a recording studio film was shown from January 9 to February 22, 2014; (2) abstract sculptures made of cellophane, chalked paper and powder were arranged on the floor and suspended from the ceiling from February 28 to April 12, 2014; (3) a life-sized sculpture was encountered by viewers on a one-on-one basis in a mirrored room from March 6 to April 19, 2014; (4) a candy-making factory was installed from April 24 to June 14, 2014; and (5) contemporary art and sculpture was displayed on the wall, floor and ceiling from May 2 to June 14, 2014; and

WHEREAS, DOB contends that art galleries do not belong in the mercantile occupancy group merely because sales comprise a portion of gallery activities; occupancy groups are intended to capture the full scope of activities associated with a particular occupancy, not just one aspect, and occupancies that include the sale of merchandise, such as coffee houses (assembly occupancy) or barber and beauty shops (business occupancy), are not classified under the mercantile occupancy group because additional characteristics call for a more comprehensive classification to address the particular life safety concerns associated with such occupancies; and

WHEREAS, DOB states that with respect to the Gallery buildings, the design and arrangement of spaces and displays of artwork are indistinguishable from those found in museums, which are also F-3 assembly occupancies; given this similarity of design, DOB contends that the distinction that artwork can be purchased from a gallery but not from a museum is not relevant to the codes’ safety considerations; and

WHEREAS, DOB also disagrees with the Appellant that the classification of the buildings as assembly instead of mercantile violates 1968 Building Code § 27-239, which, as noted above, states that “[e]very building hereafter erected or altered . . . shall, for the purposes of this code, be classified in one of the occupancy groups listed in Table 3-1 according to the main use or dominant occupancy of the building”; as noted above, the Appellant asserts that the dominant occupancy of the building is mercantile because the majority of activities at the site are sales of art; and

WHEREAS, DOB asserts that the Appellant failed to submit evidence to demonstrate that the buildings’ main use or dominant occupancy is mercantile; further, DOB states that even if the buildings’ classification were mercantile, the 1968 Building Code § 27-238 requires that every “space or room . . . be classified in one of the occupancy groups listed in Table 3-1 according to the occupancy or use of the space or room,” and DOB classifies the spaces within the buildings as assembly; thus, DOB contends that the code requires the classification of both buildings and spaces and does not mandate that the classification of the building controls the classification of its spaces; and

WHEREAS, DOB also notes that this concept is reflected in COs, which specify the occupancy classification of a building as well as the occupancy groups that apply to specific parts of a building; and

WHEREAS, DOB also disagrees with the Appellant’s occupant load calculations and asserts that, based on its calculations, each building has a capacity of more than 74 persons and therefore must obtain a Place of Assembly Certificate of Operation; and

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WHEREAS, DOB notes that 1968 Building Code § 27-358 and Table 6-2 establish the occupant load for an art gallery; according to Table 6-2, the occupancy “exhibition space” which is used for museums, is also used for art galleries because museums have spaces, activity and occupant volumes comparable to art galleries; per Table 6-2, the occupant load requirement for an “exhibition space” is ten sq. ft. of net floor area¹ per occupant; and

WHEREAS, DOB states that, with respect to an art gallery assembly occupancy, areas used for the display of art work must be included in the net floor area calculation because art installations are changed over time as new pieces having various dimensions are displayed and sold; further, DOB notes that such display areas do not fall under any exclusion listed in 1968 Building Code § 27-232’s definition of “net floor area”; and

WHEREAS, DOB agrees with the Appellant that per 1968 Building Code § 27-358(b), it has the authority to establish a lower basis for determination of occupant load where appropriate; however, DOB contends that such a reduction is not appropriate for the Gallery given the size of the exhibition space; and

WHEREAS, DOB states that even though normal occupancy may be less than that determined by Table 6-2, the normal occupant load is not an appropriate design standard because the greatest hazard to occupants occurs when an unusually large crowd is present; and

WHEREAS, DOB asserts that using the exhibition space occupant load calculation of ten sq. ft. of net floor area per person, the following are the occupant loads for the buildings: (1) 460 persons for the building on Lot 22, which has approximately 4,600 sq. ft. of net floor area; (2) 253 persons for the building on Lot 19, which has approximately 2,535 sq. ft. of net floor area; and (3) 284 persons for the building on Lot 15, which has approximately 2,835 sq. ft. of net floor area; and

WHEREAS, consequently, DOB concludes that each building has an occupant load well in excess of 75 persons; as such, each building is a “place of assembly,” which according to 1968 Building Code § 27-232 is “an enclosed room or space in which seventy-five or more persons gather for religious, recreational, educational, political or social purposes, or for the consumption of food or drink, or for similar group activities or which is designed for use by seventy-five or more persons gathered for any of the above reasons;” and

WHEREAS, DOB notes that per 1968 Building Code §

¹ “Floor area (net)” is defined in the 1968 Building Code to include actual occupied area and to exclude permanent building components, as follows: “when used to determine the occupant load of a space, shall mean the horizontal occupiable area within the space, excluding the thickness of walls, and partitions, columns, furred-in spaces, fixed cabinets, equipment, and accessory spaces such as closets, machine and equipment rooms, toilets, stairs, halls, corridors, elevators and similar unoccupied spaces.”

27-525.1(a), it is “unlawful to use or occupy any building or premises or part thereof as a Place of Assembly unless and until a permit therefor has been issued”; accordingly, DOB states that each of the buildings requires a Place of Assembly Certificate of Operation; and

WHEREAS, as to the Appellant’s assertion that because the Final Determinations for the buildings located on Lots 22 and 15 erroneously employ the 1938 Building Code for the calculation of the required occupant load despite the fact that the permit applications were filed to comply with the applicable provisions of the 1968 Building Code, the determinations are defective as a matter of law, DOB disagrees; and

WHEREAS, DOB states that the Appellant specifically requested (by checking the applicable checkboxes on the determination request form) an analysis of the buildings’ occupancy classifications and compliance under 2008, 1968, and 1938 Building Codes; and

WHEREAS, thus, DOB asserts that it was merely being responsive to the Appellant’s request; and

WHEREAS, accordingly, DOB requests that the Board deny the appeal and affirm the Final Determinations; and

CONCLUSION

WHEREAS, the Board agrees with DOB that: (1) the occupancy of each building on the site is assembly; (2) based on the occupant loads for the buildings, Place of Assembly Certificates of Operation are required for each building; and (3) references to the 1938, 1968, and 2008 Building Codes in the Final Determinations were provided at the request of the Appellant, and, in any event, would not be an impediment to the Board’s resolution of this appeal; in addition, the Board declines to consider the Appellant’s alternative compliance proposal, as it has not been submitted to DOB for that agency’s consideration; and

WHEREAS, the Board finds that, based on the evidence submitted and the applicable provisions of the 1968 Building Code, the buildings have been appropriately classified by DOB as assembly occupancies; and

WHEREAS, the Board agrees with DOB that the only applicable occupancy group for the Gallery under the 1968 Building Code and 2008 Building Code is the assembly occupancy; and

WHEREAS, the Board finds that the applicable provisions of the 1968 Building Code expressly categorize a gallery as an assembly occupancy, in that § 27-241 directs an applicant to Table 3-2 and Reference Standard RS 3-3 for the list of representative occupancies that must be used as a basis for classifying buildings and spaces by occupancy and both Table 3-2 and Reference Standard RS 3-3 clearly identify “galleries” as representative of the assembly occupancy group; and

WHEREAS, likewise, the Board agrees with DOB that an art gallery is consistent with the descriptions of assembly occupancy under 1968 Building Code §§ 27-254 and 27-257; and

WHEREAS, the Board notes that 1968 Building Code §

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27-254 classifies buildings in the assembly occupancy group when they are designed for use by any number of persons for recreational or social purposes or for similar group activities and the Board finds that an art gallery falls squarely within this classification; and

WHEREAS, the Board agrees with DOB that art galleries are designed to accommodate people convened to view and buy artwork and therefore belong in the assembly category per § 27-254; and

WHEREAS, likewise, the Board finds that art gallery patrons are physically active and do not have a common center of attention but rather may not follow a direct path as they examine various exhibits and installations; thus, per 1968 Building Code § 27-257, an art gallery is properly classified as an assembly occupancy; and

WHEREAS, as to the 2008 Building Code, the Board notes that § BC 303 specifically lists “art galleries” among the A-3 assembly uses and § BC 303.1 provides that Assembly Group A includes the use of a building or portion thereof for the gathering together of any number of persons for purposes such as social functions, recreation or similar group activities; and

WHEREAS, the Board disagrees with the Appellant that DOB determined that the David Zwirner Gallery was a gallery because its trade name include the word “gallery”; rather, DOB methodically examined the nature of the occupancy in light of the applicable provisions of the code, and concluded that the buildings at the site are properly classified as assembly occupancies; and

WHEREAS, the Board observes, as DOB notes, that neither the 1968 Building Code nor the 2008 Building Code uses the term “art sales establishment”; thus, the Board finds that there is no support in either code for the Appellant’s classification of the buildings using that term; and

WHEREAS, the Board also finds that an “art sales” mercantile occupancy is not appropriate for the buildings in question because they do not have the degree of openness and organization of displays found in most mercantile occupancies; likewise, as DOB’s catalog of recent exhibitions demonstrates (which include a film, a sculpture installation, and a candy-making factory), displays found within the Gallery have little in common with displays typically found in representative mercantile occupancies; and

WHEREAS, further, the Board agrees with DOB that the design and arrangement of spaces and displays of artwork are indistinguishable from those found in museums, which are also F-3 assembly occupancies; that a visitor can purchase the items on display at a gallery but cannot, generally speaking, purchase the items on display at a museum is, in the Board’s view, an inconsequential distinction in the realm of occupancy classification; and

WHEREAS, similarly, the Board disagrees with the Appellant that having a substantial and lucrative sales component compels classification of the buildings as mercantile; whether an art gallery is highly successful is not a reasonable consideration in determining how to classify the art gallery occupancy; rather, as DOB asserts, the nature of the

display and the anticipated behavior of the occupants control; and

WHEREAS, the Board also disagrees with the Appellant that the classification of the buildings as assembly instead of mercantile violates 1968 Building Code § 27-239; the Board finds that the Appellant failed to submit anything other than conclusory statements to demonstrate that the buildings’ “main use or dominant occupancy” is mercantile; further, even if the buildings’ classification were mercantile, the Board agrees with DOB that 1968 Building Code § 27-238 requires every space or room to be classified in one of the occupancy groups and the Board finds that DOB correctly classified the spaces within the buildings as assembly; thus, the Board concludes that both the majority of spaces within the buildings and the buildings themselves are properly classified within the assembly occupancy group; and

WHEREAS, similarly, the Board is not persuaded by the Appellant’s argument that because the typical number of visitors to the Gallery on a daily basis is ten persons or less, the buildings are not appropriately classified as assembly occupancies; first, the Appellant conceded at hearing that the number of visitors for special events and openings was significantly greater than ten persons; second, both Vice-Chair Collins and Commissioner Hinkson indicated at hearing that they had personally attended events at the Gallery and recall seeing numbers of persons well in excess of the typical occupant loads of the Gallery according to the Appellant; thus, the Board agrees with DOB that public safety dictates that a building or space be required to have sufficient egress for the maximum number of persons capable of occupying such building or space, rather than the “typical” number of persons; and

WHEREAS, as to the Appellant’s assertion that because eight nearby retail art galleries have COs that do not classify the occupancy as F-3 or A-3, DOB is arbitrarily refusing to classify the buildings on Lots 22 and 15 as mercantile, the Board does not agree; indeed, the Board finds nothing persuasive about the Appellant’s table; the actual COs themselves were not included, there are no plans associated with the information provided about the COs, and there is no indication whether the buildings have Place of Assembly Certificates of Operation; therefore, based on the Appellant’s table, it is impossible to determine the extent to which DOB’s issuance of these eight COs deviated in any meaningful respect from DOB’s position in the instant appeal; and

WHEREAS, in addition, former Chair Srinivasan noted at hearing that her own research of property records in the neighborhood surrounding the site revealed art galleries that have COs for assembly occupancy, including the Jack Shainman Gallery at 513 West 20th Street (CO No. 101301002, issued December 27, 2011) and the Bortolami Gallery-Zieher Smith Gallery at 526-520 West 20th Street (CO No. 102824552, issued December 8, 2011); and

WHEREAS, therefore, the Board concludes that DOB correctly classified the buildings’ occupancy as assembly; and

WHEREAS, the Board agrees with DOB’s occupant load calculations and agrees that each building has a capacity

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of more than 74 persons and therefore each must obtain a Place of Assembly Certificate of Operation; and

WHEREAS, the Board finds that, pursuant to 1968 Building Code § 27-358 and Table 6-2, the occupant load for the exhibition space within the subject buildings is ten sq. ft. of net floor area per occupant; accordingly, the Board agrees with DOB that each building has an occupant load well in excess of 74 persons; and

WHEREAS, the Board also agrees with DOB that the areas used for the display of art work must be included in the net floor area calculation both because art installations are changed over time as new pieces having various dimensions are displayed and sold, and because areas used for art displays are not excluded from net floor area under 1968 Building Code § 27-232's definition of "net floor area"; and

WHEREAS, the Board finds that under 1968 Building Code § 27-358(b), DOB may establish a lower basis for determination of occupant load where appropriate, but is by no means required to where it determines doing so would not further public safety; thus, the Board finds, as DOB found, that a lower basis for determination of occupant load is not appropriate for the Gallery given the size of the exhibition space and the evidence that it holds events and openings in which hundreds of persons are permitted to occupy the gallery at once; and

WHEREAS, accordingly, the Board finds that each building is a "place of assembly" pursuant to 1968 Building Code § 27-232; and

WHEREAS, the Board also notes that the failure to obtain a Place of Assembly Certificate of Operation where required is contrary to 1968 Building Code § 27-525.1(a); and

WHEREAS, turning to the Appellant's assertion that because the Final Determinations for the buildings located on Lots 22 and 15 erroneously employ the 1938 Building Code for the calculation of the required occupant load despite the fact that the permit applications were filed to comply with the applicable provisions of the 1968 Building Code, the determinations are defective as a matter of law, the Board is not persuaded; and

WHEREAS, first, as DOB notes, the Appellant specifically requested an examination of the buildings' occupancy classifications under the 2008, 1968, and 1938 Building Codes; second, and more importantly, the Board observes that DOB often clarifies the rationale for its determinations during the appeal process; thus, an appellant is given ample opportunity to respond to any arguments that DOB may not have presented at the agency level; and

WHEREAS, finally, at hearing, the Appellant advanced an alternative egress configuration for the buildings, which it represents provide a sufficient safe alternative to obtaining Public Assembly Certificates of Operation and new COs for the buildings on Lot 22 and 15; the Board declines to consider the Appellant's proposal, because it has not been submitted to DOB for consideration; and

WHEREAS, in conclusion, the Board affirms the Final Determinations classifying the buildings' occupancy as assembly and requiring a Place of Assembly Certificate of

Operation for each building; and

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determinations, dated January 14, 2014, is hereby *denied*.

Adopted by the Board of Standards and Appeals, July 29, 2014.

49-14-A

APPLICANT – Jesse Masyr, Esq of Fox Rothschild LLP, for Archdiocese of New York, owner.

SUBJECT – Application March 25, 2014 – Proposed enlargement to an existing community facility, contrary to General City Law Section 35. R1-1 zoning district.

PREMISES AFFECTED – 5655 Independence Street, Arlington Avenue to Palisade Avenue between West 256th Street and Sigma Place. Block 5947, Lot 120. Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 20, 2014, acting on DOB Application No. 220211937, reads in pertinent part:

1. The proposed horizontal enlargement is not permitted in the bed of the mapped street Approval from the Board of Standards and Appeals of Standards as per GCL 35.
2. The proposed enlargement encroaches into the front yard required from Independence Avenue contrary to ZR 24-34.
3. The proposed enlargement encroaches into the sky exposure plane from Independence Avenue contrary to ZR 24-521; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, hearing closed and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, this is an application to allow the construction of an enlargement to an existing community facility, which will be partially located within the bed of the mapped but unbuilt portion of Independence Avenue; and

WHEREAS, the subject site comprises contiguous lots (Block 5947, Lot 120 and Block 5952, Lot 120) partially within an R1-1 zoning district and partially within an R1-2 zoning district, within a Special Natural Area District; and

WHEREAS, Independence Avenue is mapped to a

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width of 60 feet, with 30 feet of width within Block 5947 and 30 feet of width within Block 5952; and

WHEREAS, the site has a lot area of approximately 356,417 sq. ft. and is entirely owned by the Archdiocese of New York; it is occupied by a three-story community facility building with approximately 75,600 sq. ft. of floor area, which was constructed in the early 1900s for retired priests; the facility is commonly known as the O'Connor Residence; and

WHEREAS, the applicant states that approximately 25,188 sq. ft. of lot area is located within the bed of Independence Avenue, and approximately 3,136 sq. ft. of the proposed enlargement will lie within the bed of mapped Independence Avenue; and

WHEREAS, the applicant also state that due to the steeply sloping nature of the site, it is considered a Tier II site within the Special Natural Area District; because the proposal includes modifications to the botanic environment and alters trees, the proposal requires a Special Natural Area District authorization from the Department of City Planning; the applicant notes that an application was submitted under Application No. N140311ZAX on March 17, 2014 and approved on June 11, 2014; and

WHEREAS, by letter dated September 24, 2013, the Fire Department states that it has reviewed the site plan and has no objection to the proposal, subject to the following conditions: (1) the entire building must be fully-sprinklered; (2) the building must be provided with interconnected smoke alarms; (3) at least one hydrant must be located within 100 feet of any and all building Siamese connections; (4) a Fire Department access road including a 70-ft. diameter turnaround must be provided; (5) "No Parking Anytime Fire Zone" signs must be installed every 75 feet along the access road; and (6) there shall be no parking anywhere along the fire access road from the public street to the turnaround; and

WHEREAS, by letter dated April 15, 2014, the Department of Environmental Protection ("DEP") states that: (1) there are no sewers or water mains at the above referenced location; and (2) Modified City Drainage Plan No. 40-1 dated June 14, 1955, calls for a future 15-inch diameter combined sewer in Independence Avenue between West 256th Street and Arlington Avenue; and

WHEREAS, DEP further stated that it requires the applicant to submit a survey/plan showing the width of mapped portion of Independence Avenue, dimensions of the property and distance from the nearest intersection; and to provide the 32-ft. wide sewer corridor for the 15-inch diameter future combined sewer, crossing the property or the applicant has an option to amend the drainage plan; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey, dated May 15, 2014; the revised survey depicts the width of Independence Avenue, the metes and bounds of the property, the distances to West 256th Street and Arlington Avenue, and the point of vertical intersection of Independence Avenue, approximately 125 feet south of the northerly property line; and

WHEREAS, the applicant states that due to the fact that the proposed high point of Independence Avenue is on the

property, property to the north can be served by the future 15-inch diameter future combined sewer that flows to the north; therefore, a sewer corridor across the property is not necessary and requests that DEP rescind their request for a sewer corridor; and

WHEREAS, by letter dated May 29, 2014, DEP states that, based on its review of the applicant's response, it has no objections to the proposal; and

WHEREAS, by correspondence dated June 18, 2014, the Department of Transportation ("DOT") states that: (1) according to the Bronx Borough President's Topographical Bureau, Independence Avenue at this location is mapped at a 60-ft. width on the Final City Map and is not titled to the City; and (2) construction within the bed of Independence Avenue is not presently included in DOT's Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the decision of the DOB, dated May 20, 2014, acting on DOB Application No. 220211937, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received July 24, 2014"-(1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped;

THAT the entire building must be fully-sprinklered;

THAT the building must be provided with interconnected smoke alarms;

THAT at least one hydrant must be located within 100 feet of any and all building Siamese connections;

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THAT a fire department access road including a 70-foot diameter turnaround must be provided;

THAT "No Parking Anytime Fire Zone" signs must be installed every 75 feet along the access road;

THAT there will not be parking anywhere along the fire access road from the public street to the turnaround;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on July 29, 2014.

89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner.
SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize a hotel (*Affinia Gardens Hotel*) under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

145-14-A

APPLICANT – Yuk Lam, for XU M Hui, owner.
SUBJECT – Application June 23, 2014 – Proposed four-story building not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law.

PREMISES AFFECTED – 136-16 Carlton Place, between Linden Place and Leavitt Street, Block 4960, Lot 62, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

28-12-BZ

CEQR #12-BSA-075Q

APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.

SUBJECT – Application February 6, 2012 – Special Permit (§73-49) to legalize the required accessory off street rooftop parking on the roof of an existing two-story office building, contrary to ZR 44-11, and Special Permit (§73-44) to reduce required accessory off street parking for office use, contrary to ZR 44-20. M1-1 zoning district.

PREMISES AFFECTED – 13-15 37th Avenue, 13th Street and 14th Street, bound by 37th Avenue to the southwest, Block 350, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 26, 2013, acting on DOB Application No. 420349279, reads:

Legalization of existing rooftop parking contrary to ZR Section 44-11;

Proposed reduction in required accessory off-street parking for office use (Use Group 6, parking requirement category B1) is contrary to ZR Section 44-20; and

WHEREAS, this is an application under ZR §§ 73-03, 73-44 and 73-49 to legalize, on a site within an M1-1 zoning district, a reduction in the required number of accessory parking spaces for a one-story commercial building occupied by offices (Use Group 6), contrary to ZR § 44-20, and the location of 15 parking spaces on the rooftop of the building, contrary to ZR § 44-11; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 2014; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and WHEREAS, the subject site is rectangular lot located on the north side of 37th Avenue between 13th Street and 14th Street, within an M1-1 zoning district; and

WHEREAS, the site has 75 feet of frontage along 37th Avenue and 7,512 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building (Use Group 6) with 7,453 sq. ft. of floor area (0.99 FAR), five parking spaces in the cellar, and 15 parking spaces on the rooftop; and

WHEREAS, pursuant to ZR § 32-15, the subject Use Group 6 office is in parking requirement category B1, which requires that one accessory parking space be provided for every 300 sq. ft. of floor area; thus, the existing Use Group 6

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office floor area at the site generates 25 required accessory parking spaces, resulting in a parking deficit of five spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject M1-1 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable Zoning Resolution provision, for Use Group 6 office use in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 44-21 the total number of parking spaces that will be required in connection with the proposal is 25 spaces; thus, if the special permit is granted, only 13 parking spaces will be required; nevertheless, the applicant proposes 20 parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant states that its good faith is demonstrated by the modesty of its request (a reduction of five spaces is requested where a reduction of 12 spaces is contemplated) and by the fact that the building is currently occupied as a Use Group 6 office; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, turning to the findings for ZR § 73-49, pursuant to that section, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant states that there are no residential uses immediately adjacent to the rooftop parking and that the nearby uses include an auto parts storage yard, a vacant lot, an office building with no windows facing the rooftop parking, and, across 37th Avenue, a public school (P.S. 111); and

WHEREAS, the applicant also notes that lighting for the rooftop parking is directed away from adjacent lots and that the site is operated Monday through Friday, from 7:00 a.m. to 6:00 p.m., and closed Saturday and Sunday; and

WHEREAS, at hearing, the Board directed the

applicant to install additional safety measures in the parking lot; and

WHEREAS, in response, the applicant represents that bumpers will be installed; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit uses is outweighed by the advantages to be derived by the community; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-03, 73-44 and 73-49 have been met; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 12-BSA-075Q, dated January 1, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-03, 73-44 and 73-49 to legalize, on a site within an M1-1 zoning district, a reduction in the required number of accessory parking spaces for a one-story commercial building occupied by offices (Use Group 6), contrary to ZR § 44-20, and the location of 15 parking spaces on the rooftop of the building, contrary to ZR § 44-11; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received July 25, 2014"—seven (7) sheets, and on further condition:

THAT a maximum of 15 parking spaces will be provided on the rooftop;

THAT a minimum of 20 parking spaces will be provided at the site;

THAT all lighting on the roof will be directed down and away from adjacent uses;

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THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

THAT there will be no change in the use of the site without prior review and approval by the Board;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

THAT the above conditions will appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

243-12-BZ

CEQR #13-BSA-015R

APPLICANT – EPDSO, Inc., for Best Equities LLC, owner; Page Fit Inc. d/b/a Intoxx Fitness, lessee.

SUBJECT – Application August 7, 2012 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Intoxx Fitness*). M3-1 zoning district.

PREMISES AFFECTED – 236 Richmond Valley Road, southern side of Richmond Valley Road between Page Avenue and Arthur Kill Road, Block 7971, Lot 200, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 18, 2012, acting on DOB Application No. 520096299, reads, in pertinent part:

Proposed physical culture establishment in an M3-1 zoning district is contrary to the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M3-1 zoning district, within the Special South Richmond Development District, the legalization of an existing physical culture establishment

(“PCE”) on the first story of a two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, the subject site is located on the south side of Richmond Valley Road, between Arthur Kill Road and Page Avenue, within an M3-1 zoning district; and

WHEREAS, the site has approximately 907 feet of frontage along Richmond Valley Road and approximately 225,417 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with 65,519 sq. ft. of floor area (0.28 FAR) and surface parking for 217 automobiles; and

WHEREAS, the applicant represents that the PCE occupies 11,725 sq. ft. of floor area on the first story; and

WHEREAS, the applicant states that the PCE is operated as Intoxx Fitness; and

WHEREAS, the applicant states that the PCE has been in operation since August 1, 2010; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight management, and aerobics; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 5:00 a.m. to 11:00 p.m., Saturday, from 8:00 a.m. to 8:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to amend the plans to reflect complying signage; and

WHEREAS, in response, the applicant submitted amended plans that reflect signage in complying with the applicable district regulations; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, the Board finds that, under the conditions

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and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 13SA015R dated August 3, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a M3-1 zoning district, within the Special South Richmond Development District, the legalization of an existing PCE on the first story of a two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 18, 2014" Two (2) – sheets and "Received July 24, 2014" One (1) – sheet; and *on further condition*:

THAT the term of the PCE grant will expire on August 1, 2020;

THAT parking for all uses within the building including the PCE will be as reviewed and approved by DOB;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

256-13-BZ thru 259-13-BZ

CEQR #14-BSA-034R

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – Variance (§72-21) to permit four detached and semi-detached homes, contrary to side yard (§23-461) and open area (§23-891) regulations, and bulk non-compliances resulting from the location of a mapped street (§23-45).

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 19, 2014, and acting on DOB Application No. 520074035, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 19, 2014, and acting on DOB Application No. 520141980, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 19, 2014, and acting on DOB Application No. 520141999, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped

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streets; and

ZR 23-461 – Proposed new construction is required to comply with required 20 foot side yard as the subject lot is the corner lot by definition from record line; and

ZR 23-891 – Proposed new construction is required to comply with required 30 foot open area when measured perpendicular to each rear wall; and

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 19, 2014, and acting on DOB Application No. 520142006, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

ZR 23-461 – Proposed new construction is required to comply with required 20 foot side yard as the subject lot is the corner lot by definition from record line; and

ZR 23-891 – Proposed new construction is required to comply with required 30 foot open area when measured perpendicular to each rear wall; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of three semi-detached, two-story, single-family homes (Use Group 2), and one semi-detached, three-story, two-family home (Use Group 2) that do not comply with the underlying zoning district regulations for front yards, side yards, and open area perpendicular to a rear wall, contrary to ZR §§ 23-00, 23-45, 23-461 and 23-891; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application, citing general concerns regarding construction within the bed of a mapped but unimproved street; and

WHEREAS, companion applications to waive General City Law (“GCL”) § 35 for the portions of the proposal within the beds of a mapped but unimproved streets were filed, pursuant to ZR § 72-01(g), under BSA Cal. Nos. 260-13-A, 261-13-A, 262-13-A, and 263-13-A, and decided at the same hearing; and

WHEREAS, the subject site is a trapezoidal lot bounded Sheridan Avenue, Giles Place, Clove Road, and a right of way for the Staten Island Rapid Transit line, within an R3-2 zoning district; and

WHEREAS, the site, which is vacant, has 148 feet of frontage along Sheridan Avenue, 100 feet of frontage along Giles Place, 72 feet of frontage along Clove Road, and 11,000 sq. ft. of lot area; the site will be divided into four tax lots (Lots 22, 23, 24, and 25) in connection with the proposed development; and

WHEREAS, the applicant notes that portions of the site are within proposed street widening areas for Sheridan Avenue (which has an improved width of 30’-0” and a mapped width of 40’-0”) and Clove Road (which has an improved width of 40’-0” and a mapped width of 80’-0”); in addition, the site is encumbered by an easement for the Staten Island Rapid Transit line; and

WHEREAS, the applicant proposes to construct three semi-detached, two-story, 1,530 sq.-ft. single-family homes (Use Group 2) and one semi-detached, three-story, two-family home (use Group 2) with 2,010 sq. ft. of floor area, for a total proposed floor area of 6,600 sq. ft. (0.6 FAR); and

WHEREAS, the applicant states that all four homes will front on Sheridan Avenue and provide a front yard depth of 15’-0” as measured from the built street (a front yard depth of 15’-0”—as measured from the street widening line—is required, per ZR § 23-45); two homes will have side yard widths of 20’-0”, one home (on Lot 24) will have a side yard width of 17’-0”, and one home (on Lot 25) will have a side yard width of 10’-0” (a minimum side yard width of 20’-0” is required, per ZR § 23-461); and

WHEREAS, in addition, the applicant states that two homes will provide open areas with depths of 40’-0”, one home (on Lot 24) will have an open area with a depth of 28’-1”, and one home (on Lot 25) will have an open area of with a depth of 21’-0”, all measured perpendicular from the improved street line to the rear wall (a minimum depth of 30’-0” is required, per ZR § 23-891, and the depth is measured from the street widening line); and

WHEREAS, the applicant notes that the widening line for Clove Road extends to a depth of 40’-0” within the site; as such, absent relief pursuant to ZR § 72-01(g) and GCL § 35, the rear open areas proposed for the four buildings would be effectively 0’-0”; and

WHEREAS, the applicant states that the proposed measurement of the buildings’ front yards from the improved width of Sheridan Avenue and the buildings’ rear open areas from the improved width of Clove Road are permitted by the Board pursuant to ZR § 72-01(g) pursuant to the above-referenced GCL § 35 waiver applications; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to ZR § 72-21 to allow the proposed side yards and rear open areas for the buildings on Lots 24 and 25, which are contrary to ZR §§ 23-461 and 23-891, respectively, which exist even in the absence of the mapped unimproved street, and, thus, which the Board does not waive pursuant to ZR § 72-01(g); and

WHEREAS, the applicant states that the site’s trapezoidal shape and three street frontages, and the presence of a transit easement and widening lines for two streets within are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations, in accordance with ZR § 72-21(a); and

WHEREAS, the applicant states that the site’s trapezoidal shape—formed by the intersection of the railroad tracks for the Staten Island Rapid Transit line with an

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otherwise rectangular parcel—is both unique in the surrounding neighborhood and an impediment to complying development of the site; and

WHEREAS, as to the uniqueness, the applicant represents that the site is one of only four sites within a 400-foot radius that have a trapezoid shape; additionally, the other three sites have significantly less lot area, front on only one street (instead of three) and are not reduced in buildable as-of-right lot area by street widening lines; and

WHEREAS, as to the shape's impact on complying development, the applicant states that such shape, in combination with the R3-2 district yard and open space requirements, prevents efficient use of the site's available floor area, resulting in significant underdevelopment; and

WHEREAS, specifically, the applicant states that due to the sharp angle of the southern boundary, half of the site is too shallow to accommodate residences with complying rear and front yards; and

WHEREAS, in addition, the applicant asserts that because one of the three streets (Clove Road) is a heavily-trafficked commercial thoroughfare and another (Giles Place) is unsuitably narrow, conforming uses in the R3-2 district front most appropriately on residence-oriented Sheridan Avenue, resulting in a further constraint on the configuration of any building(s) on the site; and

WHEREAS, the applicant states that the presence of the transit easement along Clove Road and the widening lines for Sheridan Avenue and Clove Road contribute to the site's uniqueness; and

WHEREAS, the applicant represents that among vacant sites within the study area, the subject site is the only site with two street widening lines; and

WHEREAS, the applicant also states that the easement and the widening lines effectively reduce the buildable lot area of the site from 11,000 sq. ft. to 6,600 sq. ft.; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, to demonstrate the infeasibility of developing the site without the requested waivers, the applicant explored three alternative development scenarios: (1) a complying community facility use without any waivers of GCL § 35; (2) a complying residential development (two single-family homes) without any waivers of GCL § 35; (3) a complying community facility with GCL § 35 waivers to build irrespective of the widening lines along Clove Road and Sheridan Avenue; and (4) a complying residential development (four single-family homes) with GCL § 35 waivers to build irrespective of the widening lines along Clove Road and Sheridan Avenue; and

WHEREAS, the applicant states that all four scenarios result in significantly underdeveloped and financially

infeasible developments, and that only the proposal—five total dwelling units—provide a reasonable return; and

WHEREAS, the Board agrees with the applicant that because of the site's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a reasonable return; and

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by low rise detached and semi-detached one- and two-family dwellings; and

WHEREAS, the applicant notes that the use is permitted as-of-right in the subject R3-2 district; and

WHEREAS, as to bulk, the applicant states that the proposal's floor area, wall and building height comply with the subject R3-2 regulations and that open areas and yards are consistent with the built character of the area, particularly in light of the unique constraints of the site; and

WHEREAS, the applicant states that the proposal has no impact on nearby uses, which include a mixed residential and commercial building across Giles Place, a commercial building across Clove Road, and a row of single-family dwellings across Sheridan Avenue; and

WHEREAS, the Board notes that by letter dated July 23, 2014, the Department of Transportation ("DOT") indicates that it has reviewed and approved the site plan, on condition that 20 feet of unobstructed space is maintained within the driveway of 33 Sheridan Avenue and left open and available for vehicle turnaround at all times; and

WHEREAS, therefore, the Board finds that, in accordance with ZR § 72-21(c), this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, per ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is a result of the site's unique physical conditions; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with ZR § 72-21(e); and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-034R, dated August 12, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

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Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, on a site within an R3-2 zoning district, the construction of three semi-detached, two-story, single-family homes (Use Group 2), and one semi-detached, three-story, two-family home (Use Group 2) that do not comply with the underlying zoning district regulations for side yards, and open area perpendicular to a rear wall, contrary to ZR §§ 23-461 and 23-891; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 25, 2014” – twenty-five (25) sheets; and *on further condition*:

THAT the parameters of the development will be as follows: three (25, 27, and 31 Sheridan Avenue) semi-detached, two-story, 1,530 sq.-ft. single-family homes; one (33 Sheridan Avenue) semi-detached, three-story, two-family home (use Group 2) with 2,010 sq. ft. of floor area; a total maximum floor area of 6,600 sq. ft. (0.6 FAR);

THAT 25 Sheridan Avenue (Lot 22) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 20’-0”, a minimum rear open area depth of 40’-0”, and two parking spaces;

THAT 27 Sheridan Avenue (Lot 23) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 20’-0” and a minimum rear open area depth of 40’-0”, and two parking spaces;

THAT 31 Sheridan Avenue (Lot 24) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 17’-0”, a minimum rear open area depth of 28’-1”, and two parking spaces;

THAT 33 Sheridan Avenue (Lot 25) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 10’-0”, a minimum rear open area depth of 20’-0”, and three parking spaces;

THAT 20 feet of unobstructed space is maintained within the driveway of 33 Sheridan Avenue (Lot 25) and left open and available for vehicle turnaround at all times;

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;

THAT substantial construction will be completed

pursuant to ZR § 72-23;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

260-13-A thru 263-13-A

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – The proposed buildings are also located within the bed of a mapped street, contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated March 19, 2014, acting on DOB Application Nos. 520074035, 520141980, 520141999, and 520142006 read in pertinent part:

Proposed construction located within the bed of a mapped street is contrary to section 35 of the General City Law; and

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Dara Ottley- Brown and Commissioner Montanez; and

WHEREAS, this is an application to allow on a site located within an R3-2 zoning district, the construction of three semi-detached, two-story, single-family homes, and one semi-detached, three-story, two-family home within the bed of two mapped but unbuilt portions of Clove Road and Sheridan Avenue, contrary to General City Law § 35; and

WHEREAS, the site is also subject to a variance application pursuant to ZR § 72-21 to resolve zoning objections not associated with the presence of the mapped street, which was decided on the same date; and

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WHEREAS, the subject site is a trapezoidal lot bounded by Sheridan Avenue, Giles Place, Clove Road, and a right of way for the Staten Island Rapid Transit line, within an R3-2 zoning district; and

WHEREAS, the site, which is vacant, has 148 feet of frontage along Sheridan Avenue, 100 feet of frontage along Giles Place, 72 feet of frontage along Clove Road, and 11,000 sq. ft. of lot area; the site will be divided into four tax lots (Lots 22, 23, 24, and 25) in connection with the proposed development; and

WHEREAS, the applicant notes that portions of the site are within proposed street widening areas for Sheridan Avenue (which has an improved width of 30'-0" and a mapped width of 40'-0") and Clove Road (which has an improved width of 40'-0" and a mapped width of 80'-0"); in addition, the site is encumbered by an easement for the Staten Island Rapid Transit line; and

WHEREAS, by letter dated October 23, 2013, the Fire Department states that it has reviewed the proposal and offers no objection, provided that; (1) as noted on the site plan, the exterior walls abutting the outdoor parking area of Units 2, 3, and 4 be constructed to minimum one-hour fire rating; and (2) all proposed units are to fully-sprinklered; and

WHEREAS, by letter dated October 30, 2013, the Department of Environmental Protection ("DEP") states that: (1) there are no existing City sewers in the bed of Clove Road between the Staten Island railroad and Giles Place; (2) there is an existing eight-inch city water main in the bed of Clove Road at the above referenced location; (3) there is also an existing six-inch diameter sanitary drain, an existing 24-inch diameter water main and an existing eight-inch water main in the bed of Sheridan Avenue between the Staten Island Railroad and Giles Place; (4) City Drainage Plan No. PRD-2D, sheet 2 of 9, dated November 21, 1973, calls for a future ten-inch diameter sanitary sewer, and a 12-inch diameter storm sewer to be installed in Clove Road between the Staten Island Railroad and Giles Place; and (5) there will be a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Sheridan Avenue between Staten Island Railroad and Giles Place; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped Clove Road, the width of the widening portion and the distance between the easterly lot line and the existing eight-inch diameter City Water main in Clove Road between the Staten Island Road and Giles Place; (2) the width of mapped Sheridan Avenue, the width of the widening portion and the distances between the westerly lot line and existing six-inch diameter sanitary drain, the 24-inch diameter and the eight-inch diameter City Water main in Sheridan Avenue between Staten Island Railroad Road and Giles Place; and

WHEREAS, by letter dated December 10, 2013, DEP also requires information regarding the size, type, and distance from the property line to the manholes on the existing drain in the westerly sidewalk of Clove Road; and

WHEREAS, in response to DEP's request, by letter dated December 2, 2014 and on January 14, 2014 the

applicant has submitted a revised survey and site plan addressing DEP issues; and

WHEREAS, by letter dated February 7, 2014, DEP states that it has reviewed the submission and notes that the revised site plan shows (1) the 40-foot width of the travel portion of Clove Road between the Staten Island Railroad and Giles Place, which will be available for the maintenance and or reconstruction of the existing sewer, water mains and the installation of the future sewers and (2) the 30-foot width of the travel portion of Sheridan Avenue between the Staten Island Railroad and Giles Place, which will be available for the maintenance and or reconstruction of the existing and future sewers and existing water mains; and

WHEREAS, the DEP has no objections to the proposal; and

WHEREAS, by email correspondence dated December 13, 2013 and May 7, 2014, the Department of Transportation ("DOT") states that because Sheridan Avenue is a dead end street, on-street parking requirements and minimum allowable street widths must be met on Sheridan Avenue to provide the ability for vehicles to turn around; therefore, Sheridan Avenue must be widened to a minimum of 28 feet (20 feet for two moving lanes, and eight feet for parking).

WHEREAS, the applicant asserts that: (1) there is "No parking" permitted on either side of Sheridan Avenue and (2) the Fire Department has reviewed the proposal and has not requested either a turnaround or a street widening because the existing street system is adequate to meet its needs to provide life safety services; and

WHEREAS, by letter dated June 11, 2014, DOT requires the applicant to provide 20 feet of unobstructed space in front of Tentative Lot 25 to allow for vehicles to turn around at the dead end of Sheridan Avenue; and

WHEREAS, by letter dated July 3, 2014, the applicant submitted a revised site plan depicting a 20-foot area of unobstructed space within the driveway of Tentative Lot 25; and

WHEREAS, by letter dated July 23, 2014, DOT states that it has reviewed the revised proposal and has no objections; and

WHEREAS, DOT also states that according to the Staten Island Borough President Topographical Bureau, Sheridan Avenue from the north side of Giles Place to a point approximately 150 feet south of the Staten Island Rapid Transit Operating Authority is mapped at a 40-foot width on the Final City Map; in addition, the city has an Opinion of Dedication for 30 feet, as-in-use, dated October 26, 1916; lastly, Clove Road from the north side of Giles Place to a point approximately 102 feet south of the Staten Island Rapid Operating Transit Authority is mapped at an 80-foot width on the Final City Map and the City has an Opinion of Dedication for 40 feet as-in-use, dated May 9, 1975; and

WHEREAS, the Board also notes that DOT has not represented that construction within the widening areas of Sheridan Avenue and Clove Road would conflict or interfere with its Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35,

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the Board may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01-(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non-compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, consistent with GCL § 35 and ZR § 72-01-(g), the Board finds that applying the bulk regulations across the portion of the subject site within the mapped street and the portion of the subject lot outside the mapped streets as if the portions were a lot unencumbered by mapped streets is both reasonable and necessary to allow the proposed construction; and

WHEREAS, as noted, zoning objections not associated with the presence of the mapped unbuilt street are resolved by separate application, pursuant to ZR § 72-21; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the decisions of the DOB, dated March 19, 2014, acting on DOB Application Nos. 520074035, 520141980, 520141999, and 520142006 by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt streets pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked “Received July 25, 2014” – one (1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board’s approval for compliance with the underlying zoning regulations as if the unbuilt portions of Sheridan Avenue and Clove Road streets were not mapped;

THAT 20 feet of unobstructed space must be maintained within the driveway of 33 Sheridan Avenue (Tentative Lot 25) and left open and available for vehicle turnaround at all times;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on July 29, 2014.

311-13-BZ
CEQR #14-BSA-074K

APPLICANT – Francis R. Angelino, Esq., for Midyan Gate Realty No 3 LLC, owner; for Global Health Clubs, LLC, lessee.

SUBJECT – Application November 25, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Retro Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 325 Avenue Y, northeast corner of Shell Road and Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 30, 2013, acting on DOB Application No. 320388120, reads, in pertinent part:

Proposed physical culture establishment is not permitted in M1-1 zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-1 zoning district, the legalization of an existing physical culture establishment (“PCE”) on the first story of a four-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Avenue Y, between Shell Road and West Third Street, within an M1-1 zoning district; and

WHEREAS, the site has approximately 240 feet of frontage along Avenue Y and approximately 25,799 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story commercial building and surface parking for 40 automobiles; and

WHEREAS, the applicant represents that the PCE occupies 11,976 sq. ft. of floor area on the first story; and

WHEREAS, the applicant states that the PCE is operated as *Retro Fitness*; and

WHEREAS, the applicant states that the PCE has been in operation since October 1, 2013; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight

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management, and aerobics; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board questioned whether the parking for the proposed PCE complies with the applicable provisions of the Zoning Resolution; and

WHEREAS, in response, the applicant represents that parking for the building will be as required by DOB; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA074K dated November 8, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and

Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a M1-1 zoning district, the legalization of an existing physical culture establishment (“PCE”) on the first story of a four-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 29, 2014” Three (3) – sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 1, 2023;

THAT parking for all uses within the building including the PCE will be as reviewed and approved by DOB;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

317-13-BZ

APPLICANT – Law office of Lyra J. Altman, for Michelle Schonfeld & Abraham Schonfeld, owners.

SUBJECT – Application December 10, 2013 – Special Permit (§73-622) for the enlargement of an existing two family home, to be converted to a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1146 East 27th Street, west side of 27th Street between Avenue K and Avenue L, Block 7626, Lot 63, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated September 30, 2013, acting on DOB Application No. 320828217, reads in pertinent part:

Proposed floor area is contrary to ZR 23-141;

Proposed open space is contrary to ZR 23-141;

Proposed rear yard is contrary to ZR 23-47;

Proposed side yard is contrary to ZR 23-461; and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed conversion (from a two-family home to a single-family home) and enlargement, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 27th Street and 4,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-family home with 2,719 sq. ft. of floor area (0.68 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to convert the building to a single-family home and increase its floor area from 2,719 sq. ft. (0.68 FAR) to 4,131 sq. ft. (1.03 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space from 92 percent to 56.7 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard width of 1’-7” and decrease the site’s existing side yard width of 9’- 8½” to 8’-0””; the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 29’-9” to 20’-0””; a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot 1.03 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this assertion, the applicant identified thirteen homes on the subject block and the blocks directly east and west with FARs ranging from 1.0 to 1.26; the applicant notes that three of the thirteen homes were enlarged pursuant to a special permit from the Board; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed conversion (from a two-family home to a single-family home) and enlargement, which does not comply with the zoning requirements for FAR, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received July 15, 2014”– (11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,131 sq. ft. (1.03 FAR), a minimum open space of 56.7 percent, side yards with minimum widths of 1’-7” and 8’-0”, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

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324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner.
SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2014, acting on DOB Application No. 420230422, reads in pertinent part:

Proposed FAR and open space ratio contrary to ZR 23-141; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”) and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of 78th Road and 138th Street, within an R2 zoning district; and

WHEREAS, the site has approximately 71 feet of frontage along 78th Road, approximately 102 feet of frontage along 138th Street, and 5,400 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story, single-family home with approximately 2,527 sq. ft. of floor area (0.47 FAR); and

WHEREAS, the applicant proposes enlarge the building by filling in an existing double-height space, resulting in an increase in floor area from 2,527 sq. ft. (0.47 FAR) to 2,774 sq. ft. (0.51 FAR); the maximum permitted floor area is 2,700 sq. ft. (0.5 FAR); and

WHEREAS, in addition, the applicant seeks a decrease in open space ratio from 150 percent to 137 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the special permit authorized by ZR § 73-

621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted a copy of the current certificate of occupancy for the building (No. 108877, dated April 20, 1956) to demonstrate that the building existed as a residence before December 15, 1961, which is the operative date within the subject R2 zoning district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed FAR does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space results in an open space that is at least 90 percent of the minimum required; and

WHEREAS, as to the FAR, the applicant represents that the proposed floor area does not exceed 110 percent of the maximum permitted; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) the extent to which the floor space in the attic is under a sloping roof; (2) the status of construction at the site; and (3) whether the open patio is included in floor area; and

WHEREAS, in response, the applicant submitted a plan clarifying the extent to which the floor space in the attic is under a sloping roof; and

WHEREAS, as to the status of construction, the applicant represents that as-of-right construction at the site is substantially completed; and

WHEREAS, as to the proposed open patio, the applicant provided a copy of a DOB determination, which classifies the space in question as excluded from floor area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 15, 2014”– (11) sheets and “July 22, 2014”–(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of to 2,774 sq. ft. (0.51 FAR) and a minimum open space ratio of 137, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

36-14-BZ CEQR #14-BSA-107M

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for 201 Pearl LLLC., owner; Soulcycle Maiden Lane, LLC., lessee.

SUBJECT – Application February 27, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Soulcycle*) within a mixed use. C5-5(LM) zoning district. PREMISES AFFECTED – 101 Maiden Lane aka 201 Pearl Street, northeast corner of Maiden Lane and Pearl Street, Block 69, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 25, 2014, acting on DOB Application No. 104430359, reads, in pertinent part:

Proposed physical culture establishment in a C5-5 (Lower Manhattan) zoning district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) in portions of the first and second stories of a 28-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Maiden Lane and Pearl Street, within a C5-5 zoning district, within the Special Lower Manhattan District; and

WHEREAS, the site is occupied by a 28-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 380 sq. ft. of floor area on the first story and 5,803 sq. ft. of floor area on the second story, for a total PCE floor area of 6,183 sq. ft.; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist, CEQR No. 14BSA107M dated February 3, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District, the operation of a PCE in portions of the first and second stories of a 28-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 8, 2014” Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 29, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT the hours of operation for the PCE will be limited to Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July

29, 2014.

55-14-BZ

CEQR #14-BSA-136K

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for RK&G Associates LLC., owner; 388 Athletic Club, LLC, c/o Stah Real Estate Com., lessee.

SUBJECT – Application April 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (388 Athletic Club) to operate on the fifth and sixth floors of a new 53 Story commercial and residential building. C6-45 zoning district.

PREMISES AFFECTED – 388 Bridge Street, aka 141 Lawrence Street, Block 152, Lot 1001/06, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 20, 2014, acting on DOB Application No. 320903572, reads, in pertinent part:

Proposed physical culture establishment is not permitted as of right in a C6-4.5 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, fifth, and sixth stories of a 53-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on a through lot within the block bounded by Fulton Street, Lawrence Street, Willoughby Street, and Bridge Street, within a C6-4.5 zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the site has 67,788 sq. ft. of lot area, with frontages along Fulton Street, Lawrence Street, and Willoughby Street; and

WHEREAS, under construction at the site is a 53-story mixed residential and commercial building with 599,205 sq. ft. of floor area (8.8 FAR); and

WHEREAS, the proposed PCE will occupy 232 sq. ft. of floor space in the cellar, 927 sq. ft. of floor area on the first

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story, 6,203 sq. ft. of floor area on the fifth story, and 7,282 sq. ft. of floor area on the sixth story; and

WHEREAS, the PCE will be operated as 388 Athletic Club; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 5:30 a.m. to 11:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board requested clarification regarding: (1) whether the terrace on the sixth story would be accessed by patrons of the PCE; (2) whether the fire alarm would be connected to a central station; and (3) whether the PCE complies with the applicable provisions of the ADA; and

WHEREAS, in response, the applicant submitted amended plans noting that: (1) the sixth-story terrace would not be accessed by patrons of the PCE; (2) the fire alarm would be connected to a central station; and (3) the PCE complies with the applicable provisions of the ADA; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14-BSA-136K dated May 19, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, fifth, and sixth stories of a 53-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work

shall substantially conform to drawings filed with this application marked “Received July 18, 2014,” six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 29, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT the hours of operation for the PCE will be limited to seven days per week, from 5:30 a.m. to 11:00 p.m.;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

133-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

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 TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1

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zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Father Capodanno Boulevard, between Doty Avenue and Alex Circle, within an R3-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Father Capodanno Boulevard and 2,025 sq. ft. of lot area; the site is also within the widening line for Doty Avenue, making it a corner lot with two required front yards; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 875 sq. ft. of floor area (0.43 FAR); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.53 FAR); and

WHEREAS, the applicant states that the proposed building complies in all respects with the bulk regulations of the subject R3-1 district except that a front yard depth of 0’-6” is proposed along Doty Avenue (a minimum front yard depth of 10’-0” is required, per ZR § 23-45); and

WHEREAS, the applicant notes that the proposed front yard depth of 0’-6” along Doty Avenue is actually a deeper front yard than is currently provided at the site; due to the location of the street widening line along Doty Avenue, the existing building provides no front yard along Doty Avenue; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying

with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the front yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested front yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is entirely consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, wider side yards, and a deeper front yard along Father Capodanno Boulevard than the existing building; therefore, the proposal will provide significantly more open space on the site than is currently provided; and

WHEREAS, in addition, as noted above, the proposed front yard waiver along Doty Avenue is an improvement

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upon the existing condition in which no front yard is provided and the building protrudes into the street widening line for Doty Avenue; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.53 FAR) and a minimum front yard depth of 0'-6" along Doty Avenue, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

134-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 53 Doty Avenue, Block 3124, Lot 147, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of north side of Doty Avenue, between Father Capodanno Boulevard and Alex Circle, within an R3-1 zoning district; and

WHEREAS, the site has 27 feet of frontage along Doty Avenue and 2,187 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 590 sq. ft. of floor area (0.27 FAR); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.49 FAR); and

WHEREAS, the applicant states that the proposed building complies in all respects with the bulk regulations of the subject R3-1 district except that a rear yard depth of 26'-

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5” is proposed (a minimum rear yard depth of 30’-0” is required, per ZR § 23-47); and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the

neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a wide side yard along the northern lot line, and a deeper front yard than the existing building; therefore, the proposal will provide significantly more open space on the site than is currently provided; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 16, 2014”-(3) sheets and “July 11, 2014”-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.49 FAR) and a minimum rear yard depth of 26’-5” along Doty Avenue, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

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135-14-A

APPLICANT – Department of Housing Preservation and Development.

SUBJECT – Application June 16, 2014 – Waiver of Section 36, Article 3 of the General City Law, property is not fronting a mapped street. R3-1 Zoning District.

PREMISES AFFECTED – 19 Sunnymeade Village, Block 3122, Lot 174, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a single-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on July 22, 2014 after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is applicant is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located along an access road within Sunnymeade Village, within an R3-1 zoning district; and

WHEREAS, the site has 31 feet of frontage along an unmapped right-of-way within Sunnymeade Village and 2,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,120 sq. ft. of floor area (0.22 FAR); and

WHEREAS, the applicant proposes to build a single-family home with 1,309 sq. ft. of floor area (0.26 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated July 21, 2014, Fire Department states that it has reviewed the proposal and has no objections, subject to the following conditions: (1) the entire building will be fully-sprinklered in conformity with

provisions of Chapter 9 of the 2008 Building Code; (2) interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code; (3) the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code; and (4) the building will be a “like-for-like replacement” that does not increase the intensity of the use; and

WHEREAS, the Board notes that, at hearing, the applicant agreed to conditions set forth by the Fire Department and later submitted amended plans reflecting the proposal’s compliance with the conditions; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked “July 28, 2014”-(1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code;

THAT interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code;

THAT the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code;

THAT changes to the use or occupancy of the building will be subject to Board review and approval; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

136-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 16 Mapleton Avenue, block 3799, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,

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Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure a and special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR §§ 23-461, 54-313, 54-41, and 64-723; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the south side of Mapleton Avenue, between Grimsby Street and Freeborn Street, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Mapleton Avenue and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 720 sq. ft. of floor area (0.36 FAR); the existing home has the following non-compliances: a front yard depth of 6’-10” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); and side yards with widths of 4’-0” and 3’-1” (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, per ZR § 23-461); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged; and

WHEREAS, thus, the applicant states that a second story with the existing front and side yards is permitted at the site; however, the applicant seeks to reduce the width of the eastern side yard from 4’-1” to 3’-0”; accordingly, the applicant requests a special permit to allow this 1’-1” reduction; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

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WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint and a deeper front yard than the existing building, and it maintains the existing western side yard width; therefore, the proposal will provide significantly more open space on the site than is currently provided; further, despite the 1'-1" reduction in the eastern side yard width, a distance of 8'-1" will be maintained between the proposed building and the building directly east; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR §§ 23-461, 54-41 and 64-72; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3'-0" and 3'-1", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July

29, 2014.

137-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 174 Kiswick Street, Block 3736, Lot 21, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the east side of Kiswick Street, between Bedford Avenue and Midland Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Kiswick Street and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,030 sq. ft. of floor area (0.52 FAR); the existing home has the following non-compliances: a front yard depth of 5'-0" (a minimum front yard depth of 15'-0" is required, per ZR § 23-45); and side yards with widths of 3'-4"(northern side yard) and 1'-2"

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(southern side yard) (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each, per ZR § 23-461); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 15'-0", a rear yard depth of 40'-0", a northern side yard width of 3'-2", and southern side yard width of 3'-3"; and

WHEREAS, the applicant represents that the building directly north of the proposed building is built to the both sites' common side lot line; as such, the building directly north of the site is located 3'-2" from the proposed building; in addition, the building on the adjoining zoning lot to the south of the site is located 6'-6" from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant the applicant seeks a special permit to allow the reduction of the width of the northern side yard from 3'-4" to 3'-2", and construction of the new building with a distance of less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate

conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 40'-0" where a depth of only 30'-0" is required, and increase in front yard from a non-complying 5'-0" to a complying 15'-0"; in addition, it increases one side yard width by 2'-1" and decreases the other side yard width by only 0'-2"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the

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construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 16, 2014”-(1) sheet and “July 11, 2014”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3’-2” and 3’-3”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

138-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED – 1099 Olympia Boulevard Block 3804, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this

application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, a member of the surrounding community testified in opposition to application, citing concerns about construction operations adversely affecting her property; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard, between Midland Avenue and Lincoln Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Olympia Boulevard and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,214 sq. ft. of floor area (0.61 FAR) (a maximum of 1,200 sq. ft. of floor area (0.60 FAR) is permitted, per ZR § 23-141; in addition to FAR, the existing home has the following non-compliances: a front yard depth of 1’-6” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); side yards with widths of 1’-11” (southern side yard) and 1’-0” (northern side yard) (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, per ZR § 23-461); and a rear yard depth of 2’-4” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 15’-0”, a rear yard depth of 45’-0”, an southern side yard width of 3’-0”, and northern side yard width of 3’-5”; and

WHEREAS, the applicant represents that the building south of the proposed building is built to the both sites’ common side lot line; as such, the building directly west of the site is located 1’-11” from the existing building and will be located 3’-0” from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8’-0” is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

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WHEREAS, thus, the applicant the applicant seeks a special permit to allow the construction of the new building with a distance of less than 8'-0" from the building directly west of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development

of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 45'-0" where a depth of only 30'-0" is required, and increase in front yard from a non-complying 2'-4" to a complying 15'-0"; in addition, it increases the widths of both side yards by 1'-1" and 2'-5", for the southern and northern side yards, respectively; the applicant also notes that the proposed building will located 8'-2" from the building directly north of the site; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

MINUTES

Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

139-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.

PREMISES AFFECTED –555 Lincoln Avenue, Block 3804, Lot 8, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, a member of the surrounding community testified in opposition to application, citing concerns about construction operations adversely affecting her property; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard, between Midland Avenue and Lincoln Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along

Olympia Boulevard and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,214 sq. ft. of floor area (0.61 FAR) (a maximum of 1,200 sq. ft. of floor area (0.60 FAR) is permitted, per ZR § 23-141; in addition to FAR, the existing home has the following non-compliances: a front yard depth of 1’-6” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); side yards with widths of 1’-11” (southern side yard) and 1’-0” (northern side yard) (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, per ZR § 23-461); and a rear yard depth of 2’-4” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 15’-0”, a rear yard depth of 45’-0”, an southern side yard width of 3’-0”, and northern side yard width of 3’-5”; and

WHEREAS, the applicant represents that the building south of the proposed building is built to the both sites’ common side lot line; as such, the building directly west of the site is located 1’-11” from the existing building and will be located 3’-0” from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8’-0” is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant the applicant seeks a special permit to allow the construction of the new building with a distance of less than 8’-0” from the building directly west of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the

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proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 45'-0" where a depth of only 30'-0" is required, and increase in front yard from a non-complying 2'-4" to a complying 15'-0"; in addition, it increases the widths of both side yards by 1'-1" and 2'-5", for the southern and northern side yards, respectively; the applicant also notes that the proposed building will be located 8'-2" from the building directly north of the site; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the

proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

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2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.
SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for continued hearing.

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for adjourned hearing.

208-13-BZ

APPLICANT – Issa Khorasanchi, for Kenneth Segal, owner; Dimitriy Brailovski, lessee.

SUBJECT – Application July 8, 2013 – Special Permit (§73-36) to legalize the use of a physical culture establishment (*Fitness Gallery*) located on the second floor of a two story commercial building. C8-1/R4 zoning district.

PREMISES AFFECTED – 1601 Gravesend Neck Road, Gravesend Neck Road, between East 16th and East 17th Street, Block 7377, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

271-13-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for continued hearing.

283-13-BZ

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for adjourned hearing.

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

315-13-BZ

APPLICANT – Law office of Stuart Klein, for Flywheel 415 Greenwich, LLC., owner.

SUBJECT – Application December 6, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Flywheel Sports*). C6-2A (TMU) zoning district.

PREMISES AFFECTED – 415-427 Greenwich Street, 12-18 Hubert Street & Laight Street, Block 215, Lot 7504, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.
SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Brooklyn Athletic Club*). M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

5-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.
SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) to add a third and fourth floor to an existing school building (*Congregation Chasidei Belz Beth Malka*), contrary to floor area (§24-11) lot coverage, maximum wall height (§24-521), side yard (§24-35), front yard (§24-34) and rear yard (§24-361) regulations. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for adjourned hearing.

40-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bill Stathakos, owner; Blink Fulton Street, Ink., lessee.

SUBJECT – Application March 4, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 1413/21 Fulton Street, north side of Fulton Street, 246 Ft. West of Tompkins Avenue, Block 1854, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

47-14-BZ

APPLICANT – John M. Marmora, Esq., for RKR Properties, Inc., owner; McDonald's USA, LLC., lessee.

SUBJECT – Application March 26, 2014 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald's*) with an accessory drive-through facility. C1-2/R5D zoning district.

PREMISES AFFECTED – 122-21 Merrick Boulevard, northwest corner of Merrick Boulevard and Sunbury Road, Block 12480, Lot(s) 32, 39, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

MINUTES

*CORRECTION

The resolution adopted on July 22, 2014, under Calendar No. 775-85-BZ and printed in Volume 99, Bulletin No. 30, is hereby corrected to read as follows:

775-85-BZ

APPLICANT – Sheldon Lobel, P.C., for Ivy Cross Island Plaza, owner.

SUBJECT – Application December 18, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of a three-story office building, contrary to permitted height and use regulations, which expired on February 24, 2012; Amendment to modify the parking layout, eliminate buffering and eliminate the term; Waiver of the Rules. C1-3/R2 and R2 zoning district.

PREMISES AFFECTED – 133-33 Brookville Boulevard, triangular lot with frontages on Brookville Boulevard, Merrick Boulevard, 133rd Avenue and 243rd Street, Block 12980, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment to permit: (1) the continued operation, without a term, of an office building (Use Group 6) on a site partially within R2 zoning district and partially within an R2 (C1-3) zoning district; (2) certain site modifications, including the elimination of buffering; and (3) the elimination of the hours of operation restriction; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot with frontages along 133rd Avenue (248 feet), 243rd Street (51 feet), Brookville Boulevard (590 feet) and Merrick Boulevard (780 feet); and

WHEREAS, the site is located partially within R2 zoning district and partially within an R2 (C1-3) zoning district; historically, the R2 (C1-3) portion of the site was zoned R2 (C2-1); and

WHEREAS, the site has approximately 181,531 sq. ft. of lot area and is occupied by a three-story commercial

building with 222,285 sq. ft. of floor area (1.22 FAR) and 245 unattended parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the site since February 24, 1987, when, under the subject calendar number, the Board granted a variance to permit, on a site partially within an R2 zoning district and partially within an R2 (C2-1) zoning district, the construction of a three-story office building utilizing an existing steel skeleton, which exceeded the maximum permitted height and did not comply with the use regulations, for a term of 25 years, to expire on February 24, 2012; in addition, 286 attended parking spaces were permitted under the grant as accessory to the office use; and

WHEREAS, the applicant states that, at the time of the grant, the northeast portion of the subject block (Tax Lots 45, 47, 49, 51, 53, 57, and 58, hereafter known as the “Outparcels”) was occupied with homes; subsequent to the grant, the homes were demolished and the subject site’s parking lot was expanded, increasing the number of spaces in the parking lot to approximately 420 (245 spaces on the site, 82 spaces in the R2 (C1-3) portion of the Outparcels, and 93 spaces in the R2 portion of the Outparcels); the applicant notes that although the owner of the subject site owns the Outparcels, they remain separate tax and zoning lots; and

WHEREAS, the applicant now requests an amendment to permit the following changes to the grant: (1) elimination of the 25-year term; (2) reduction in the number of parking spaces at the site, from 286 attended spaces, to 245 unattended spaces; (3) elimination of the buffering requirement between the site and the Outparcels; and (4) elimination of the hours of operation restriction, which limits the use of the building to Monday through Saturday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, as to the term, the applicant contends that a variance term on a building of this scale presents an undue hardship on the owner’s ability to conduct normal business in the commercial real estate market, in that it creates uncertainty with respect to both leasing and financing; and

WHEREAS, as to the reduction in the number of parking spaces, the applicant states that although the number of spaces at the subject site is reduced, the number of available spaces for the uses in the building has increased by 175 spaces, owing to the use of the Outparcels for additional parking; and

WHEREAS, as to the elimination of buffering, the applicant states that buffering is unnecessary given the demolition of the homes on the Outparcels and their current use as parking for the subject building; and

WHEREAS, finally, as to the elimination of the hours of operation, the applicant states that requiring all office workers at the building to adhere to a strict 8:00 a.m. to 6:00 p.m. schedule is impractical for a building of this size with this diversity of tenants; likewise, the limitation is unnecessary, since the Outparcels no longer contain residential uses and the entire block is devoted office uses and buffered from nearby residential uses by streets; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the

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Board may extend the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) notify the surrounding neighbors of the request to eliminate the term; (2) enhance the landscaping around the perimeter of the site; and (3) provide information on the lighting of the parking lot; and

WHEREAS, in response, the applicant submitted proof that the tenants were notified and an amended site plan, which indicates that 16 street trees will be provided along 133rd Avenue, as well as a four- to six-foot uniform hedge barrier along 133rd Avenue and 243rd Street; and

WHEREAS, in addition, the applicant states that parking lot lights are directed downward and away from residential uses and are on timers, which adjust for different seasons; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, as adopted on February 24, 1987, to permit the noted modifications, including the elimination of the term and the elimination of the restrictions on the hours of operation, *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received July 8, 2014' - six (6) sheets; and *on further condition*:

THAT a minimum of 245 unattended parking spaces will be provided at the site;

THAT lighting will be directed down and away from residential uses;

THAT the site plan will be in accordance with the BSA-approved plans;

THAT all conditions from prior resolutions not waived herein by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 22, 2014.

*The resolution has been amended in part of the 10th WHEREAS, to add the number "8" in the section which **read**: ...*Monday through Saturday, from :00 a.m. to 6:00 p.m.; and. Now reads*: ...*Monday through Saturday, from 8:00 a.m. to 6:00 p.m.; and. Corrected in Bulletin No. 31, Vo. 99, dated August 6, 2014.*

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*CORRECTION

The resolution adopted on July 15, 2014, under Calendar No. 266-07-A and printed in Volume 99, Bulletin Nos. 27-29, is hereby corrected to read as follows:

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a six-story mixed residential and community facility building at the subject site; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014 and June 10, 2014, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn recommends disapproval of this application, citing concerns about the lack of maintenance of the site and its effect on nearby residents; and

WHEREAS, Assemblyman Steven Cymbrowitz provided testimony in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association provided testimony in opposition to this application; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition”; and

WHEREAS, the Opposition raised the following concerns with respect to the instant application: (1) that a “For Sale” sign has been posted at the site recently; (2) that the owner does not have the financing to complete the project; (3) that there are open Department of Buildings (“DOB”) and

Environmental Control Board (“ECB”) violations at the site; (4) that the sidewalk along the perimeter of the building is in disrepair; (5) that the site is a dumping ground; and (6) that the site negatively affects the quality of life and property values of the surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue S and East 16th Street, within an R4-1 zoning district; and

WHEREAS, the site has 85 feet of frontage along Avenue S, 95 feet of frontage along East 16th Street, and 8,075 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a six-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 25 dwelling units; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that New Building Permit No. 302054568-01-NB was issued on January 11, 2006 (the “New Building Permit”), authorizing construction of the building in accordance with the R6 zoning district regulations; and

WHEREAS, on February 15, 2006 (the “Enactment Date”), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, the New Building Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and foundations were not complete; and

WHEREAS, the applicant notes that by letter dated November 18, 2008, DOB acknowledged that the New Building Permit was lawfully issued; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board adopted a resolution recognizing that a vested right to continue construction under the New Building Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the New Building Permit for a term of four years, to expire on December 9, 2012; and

WHEREAS, the applicant represents that, subsequent to the 2008 grant, construction did not proceed due to insufficient financing; thus, as of December 9, 2012, construction had not been completed and a certificate of occupancy had not been issued for the building; and

WHEREAS, consequently, the applicant now seeks an additional four-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to: (1) demonstrate that financing has been secured to complete the project; (2) clarify the status of open violations; and (3) respond to the concerns of the Opposition regarding the disrepair of the sidewalk and the lack of maintenance at the site; and

WHEREAS, as to the financing, the applicant provided an affidavit from an owner of the site, which indicates that Besyata Investment Group has committed up to \$6,000,000 to complete construction of the building; and

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WHEREAS, as to the open violations, the applicant represents that although the violating conditions have been eliminated, the fines have yet to be paid; as such, the violations remain open; and

WHEREAS, the applicant states that it will resolve all outstanding violations upon the renewal of the New Building Permit by the Board; and

WHEREAS, as to the disrepair of the sidewalk, the applicant states that because construction machinery must access the site by traversing the sidewalk, the developer did not plan to repair the sidewalk until the building is nearing completion; and

WHEREAS, the Board directs the applicant to remove the broken portions of the sidewalk and install had gravel or a similar temporary surface in order to provide a level walkway; and

WHEREAS, as to the maintenance of the site, the applicant provided an invoice and photographs of the site, which demonstrate that the site has been cleared of all debris and garbage; and

WHEREAS, as to the Opposition's concern regarding the "For Sale" at the site; in sum and substance, the Opposition is concerned that the applicant seeks renewal of the New Building Permit for the sole purpose of conveying the site to another developer, which the Opposition characterizes is inconsistent with the owner's statement that it has obtained financing to complete the building; and

WHEREAS, the Board notes, however, that under the common law doctrine of vested rights, such rights accrue not to a specific owner but rather to the real property itself; as such, a change in ownership—let alone an anticipated change in ownership or control—is not a basis for the Board to deny a request for an extension of time to complete construction; and

WHEREAS, likewise, the Board acknowledges the limitations on its authority to deny a request for an extension of time to complete construction where it has already recognized that the right to continue construction has vested, as set forth in Lefrak Forest Hills Corp. v Galvin, 40 AD2d 211, 217 [2d Dept 1972] affd, 32 NY2d 796, 298 NE2d 685 [1973]; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 302054568-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on July 15, 2016.

Adopted by the Board of Standards and Appeals, July 15, 2014.

The resolution has been amended. Corrected in Bulletin No. 31, Vo. 99, dated August 6, 2014.

BULLETIN

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180-14-A

332 West 44th Street, Situated on the south side W 44th St., 378 west of th corner formed by the intersection of W 44th St & 8th Ave. & 250 feet east of the intersection of W 44th St & 8th Ave., Block 1034, Lot(s) 48, Borough of **Manhattan, Community Board: 4**. Appeal challenging the Department of Building's determination that the subject façade treatment located on the North wall is an impermissible accessory sign as defined under the ZR Section 12-10 . C6-2SCD district.

181-14-BZ

670 92nd Street, located on 92nd Street, between Battery Avenue and 7th Avenue, Block 6143, Lot(s) 35, Borough of **Brooklyn, Community Board: 10**. Variance (§72-21) to permit the construction of an educational and cultural facility be located on the premises, located within an R4B zoning district. R4B district.

182-14-BZ

1977 Homecrest Avenue, Between Avenue "S" and Avenue "T", Block 7291, Lot(s) 136, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge an existing two story dwelling with cellar and attic, in a residential zoning district, also seeks to vary the floor area ratio, side yard and rear yard requirements, located within an R5 zoning district. R5 district.

183-14-BZ

113 Nassau Street, Northwest side of Nassau Street, 35.02 feet north of Ann Street, Block 90, Lot(s) 17, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment (Blink Fitness)within portions of an existing mixed use building, located within an C5-5(LM) zoning district. C5-5-LM district.

184-14-BZ

1-37 12th Street, Located on the eastern side of the intersection between Hamilton Place and 12th Street, Block 1007, Lot(s) 172, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-36) to allow the operation of a Physical Culture Establishment(PCE) on the third floor of the existing building at the premises, located within an M1-2 zoning district. M1-2 district.

185-14-BZ

14 Wall Street, located on the North side of Wall Street with frontage on Nassau Street and Pine Street, Block 46, Lot(s) 9, Borough of **Manhattan, Community Board: 1**. Special

Permit (§73-36) to permit the operation of a Physical Culture Establishment(PCE) on the cellar and sub-cellar floor of the existing building at the premises, which is located in a C5-5 zoning district. C5-5 district.

186-14-BZ

51-63 Bond Street and, Southeast corner of Bond Street and Schermerhorn Street., Block 172, Lot(s) 5,7,1013,14,15.109, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to permit the construction of a new hotel building with ground floor retail, located within an C6-1 (DB) district. C6-1DB & R6B DB district.

187-14-BZ

71 Longstreet Avenue, Bound by Glennon Place, Longstreet Avenue, and Hatting Place, Block 5522, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21):to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

188-14-BZ

73 Longstreet Avenue, Bound by Glennon Palace, Longstreet Avenue and Hatting Place, Block 5522, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided in five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

189-14-BZ

75 Longstreet, Bound by Glennon Place, Longstreet Avenue, and Hatting Place, Block 5524, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

190-14-BZ

77 Longstreet Avenue, Bonded by Glennon Place, Longstreet Avenue, and Hatting Place, Block 5524, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

191-14-BZ

79 Longstreet Avenue, Bound by Glennon Place, Longstreet Avenue and Hatting Place, Block 5524, Lot(s) 154, Borough

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of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDG zoning district. kC3A/LDGM district.

192-14-A

10 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Article 3, Section 36 of the General City Law. R3-2 Zoning District R3-2(SRD) district.

193-14-A

12 Winslow Place, Southwest corner of Intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 42, Borough of **Staten Island, Community Board: 3**. Proposed to construction of buildings that do nor front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2(SRD) district.

194-14-A

18 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street, pursuant to Section 36 ,Article 3 of the General City Law. R3-2(SRD) district.

195-14-A

20 Winslow Place, , Block 6373, Lot(s) 45, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street, pursuant to, Section 36 Article 3 of the General City Law. R3-2(SRD) district.

196-14-A

26 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 145, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped pursuant to Section 36 ,Article 3 of the General City Law. R3-2(SRD) district.

197-14-A

30 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 146, Borough of **Staten Island, Community Board: 3**. Propose construction of the buildings that do not front on a legally mapped street pursuant to Section 36 , Article 3 of the General City Law. R3-2(SRD) district.

198-14-A

32 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 147, Borough of **Staten Island, Community Board: 3**. Proposed construction of the buildings that do front on a legally mapped street, pursuant to Section 36 , Article 3 of the General City Law. R3-2(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.

CALENDARS

SEPTEMBER 16, 2014, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 16, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrachi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

229-84-BZ

APPLICANT – Troutman Sanders LLP, for High Definition Realty, LLC. owner; Bally Total Fitness of Greater New York, lessee.

SUBJECT – Application June 16, 2014 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (*Bally's Total Fitness*) which expires on November 27, 2014. M1-1 zoning district.

PREMISES AFFECTED – 75-28 Queens Boulevard, block bounded by Queens Boulevard Jacobus Street, 51st Avenue and Kneeland Street, Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

178-03-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, Inc., owner.

SUBJECT – Application June 6, 2014 – Extension of Term of a Special Permit (§73-211) permitting the operation of an automotive service station (UG 16B) which expired on April 28, 2014. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 114-02 Van Wyck Expressway, south west corner of Linden Boulevard and Van Wyck Expressway, Block 11661, Lot 7, Borough of Queens.

COMMUNITY BOARD #10Q

19-12-A

APPLICANT – Law Offices of Marvin B Mitzner, LLC., for 38-30 28th Street, LLC., owner.

SUBJECT – Application May 9, 2014 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28th Street, west side of 28th Street between 38th and 39th Avenues, Block 386, Lot 27, Borough of Queens.

COMMUNITY BOARD #1Q

67-13-A

APPLICANT – NYC Board of Standards And Appeals
OWNER OF PREMISES - OTR 945 Zerega LLC, lessee.
SUBJECT – Application August 13, 2014 – Reopening by court remand for supplemental review of whether a sign at the subject site was a permitted non-conforming advertising sign in light of the Board's decision in BSA Cal. No. 96-12-A. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ZONING CALENDAR

81-12-BZ

APPLICANT – Eric Palatnik, P.C., for McDonald's Real Estate Co., owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-243) to permit the demolition and reconstruction of an eating and drinking establishment (Use Group 6) with an accessory drive-through and on-site parking. C1-3/R3-2/R3A zoning district.

PREMISES AFFECTED – 98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 23, Borough of Queens.

COMMUNITY BOARD #6Q

176-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 6 on the first floor and Use Group 2 residential on the second through sixth floors of an existing building, contrary to Sections 42-14(D)(2)(b) and 42-10 of the zoning resolution.

CALENDARS

PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, Borough of Manhattan.

COMMUNITY BOARD # 2M

25-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Yeshiva of Flatbush, LLC, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing four story Yeshiva. R2 & R5 zoning district.

PREMISES AFFECTED – 1601-1623 Avenue J aka 985-995 East 16th Street & 990-1026 East 17th Street, Block 6709, Lot(s) 32, 34, 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

42-14-BZ

APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.

SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.

PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #8M

91-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

COMMUNITY BOARD #14BK

93-14-BZ

APPLICANT – Eric Palatnik, P.C., for 455 West 37 LLC., owner; MJM Boxing LLC., lessee.

SUBJECT – Application September 16, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Title Boxing Club*). R8A/C2-5 zoning district.

PREMISES AFFECTED – 455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

96-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.

SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district.

PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

COMMUNITY BOARD #12M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 19, 2014
10:00 A.M.**

Present: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

611-52-BZ

APPLICANT – Gerald J. Caliendo, for John Blumenfield - HL Dalis, Inc., owner.

SUBJECT – Application October 15, 2013 – Extension of Term (§11-411) of a previously approved variance permitting a one story warehouse building, which expired on May 5, 2013. R5 zoning district.

PREMISES AFFECTED – 35-35 24th Street, east side of 24th Street, 130.63 feet south from the intersection of 35th Avenue and 24th Street, Block 338, Lot 8, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of time to complete construction, which expired on January 9, 2003, and an extension of term for a variance permitting a warehouse within a residence district, which expired on May 5, 2013; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of 24th Street, between 35th Avenue and 36th Avenue, within an R5 zoning district; and

WHEREAS, the site has approximately 311 feet of frontage along 24th Street and 33,393 sq. ft. of lot area; it is occupied by a one-story warehouse with approximately 20,252 sq. ft. of floor area (0.61 FAR); and

WHEREAS, the Board has exercised jurisdiction over the site since May 5, 1953, when, under the subject calendar number, it granted an application to permit the continued use of an existing one-story warehouse building in a residence

district, contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, the grant was extended at various times; most recently, on January 9, 2001, the Board amended the grant to permit a 3,720 sq.-ft. enlargement, and extended the term of the grant until May 5, 2013; and

WHEREAS, pursuant to the 2001 grant, substantial constructed was to be completed by January 9, 2003; however, the applicant states that the enlargement was never constructed due to a lack of funding; and

WHEREAS, accordingly, the applicant now seeks an extension of time of complete construction and an extension of the term of the variance; the enlarged building will have 23,972 sq. ft. of floor area (0.72 FAR); and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; likewise, the Board may, in appropriate cases, grant an extension of time to complete construction; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR § 11-411; in addition, the Board finds that the requested extension of time to complete the construction authorized under the 2001 grant is appropriate.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 5, 1953, so that as amended the resolution reads: “to permit an extension of time to complete construction and to permit an extension of the term of the variance for an additional ten years from May 5, 2013, expiring on May 5, 2023; *on condition*:

THAT the term of the variance will expire on May 5, 2023;

THAT the building will have a maximum of 23,972 sq. ft. of floor area (0.72 FAR);

THAT the premises will be maintained free of debris and graffiti;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT substantial construction will be completed by August 19, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 19, 2014.

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751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Baron Properties III, Inc., owner.

SUBJECT – Application October 1, 2013 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (*Genesis Auto Town*) which expired on January 23, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2001; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, northwest corner of intersection of Northern Boulevard and 201st Street, Block 6261, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting an automotive repair shop within a residence district, which expired on January 23, 2009; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in *The City Record*, with continued hearings on June 17, 2014, and July 29, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of the application, subject to the following conditions: (1) that the premises shall be kept clean of debris and graffiti; (2) that no repairs shall be performed in the street or on the sidewalk; (3) that the sidewalk shall not be blocked; (4) that there shall be no overnight parking of trucks or cars except those vehicles that are awaiting service; (5) that the hours of operation shall be limited to Monday through Friday, from 8:00 a.m. to 8:00 p.m., Saturday, from 8:00 a.m. to 6:00 p.m., and closed on Sunday; and (6) that the tire racks in front of the building and the tires stored in the northwest corner of the premises shall be permanently relocated to a storage container and/or placed within the bays; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of the application, provided that the applicant complies with the conditions of Community Board 11; and

WHEREAS, certain members of the surrounding community, including a representative from the Auburndale Improvement Association, testified in opposition to the proposed hours of operation; in addition, certain members expressed concern with the presence of stacked tires at the

site, the colors of the building and the storage container, the poor management of the dumpster, the noise of idling vehicles, and the lack of landscaping; and

WHEREAS, the subject site is the triangular block bounded by 201st Street, 43rd Avenue, and Northern Boulevard; it is located within a C2-2 (R3-2) zoning district; and

WHEREAS, the site has approximately 71 feet of frontage along 201st Street, approximately 128 feet of frontage along 43rd Avenue, approximately 152 feet of frontage along Northern Boulevard, and 5,186 sq. ft. of lot area; it is occupied by a one-story automotive repair shop with approximately 1,659 sq. ft. of floor area (0.32 FAR); and

WHEREAS, the Board has exercised jurisdiction over the site since October 7, 1952, when, under BSA Cal. No. 22-52-BZ, it granted, pursuant to 1916 Zoning Resolution §§ 7f, 7i, and 7h, an application to permit in a business use district the change in occupancy from sale and display of more than five motor vehicles to a gasoline service station, lubratorium, car washing, motor vehicle repair shop, office, and parking and storage of motor vehicles, for term of 15 years, to expire on October 7, 1967; and

WHEREAS, on October 17, 1967, the grant was extended for a term of ten years; and

WHEREAS, on January 23, 1979, under the subject calendar number, the Board granted an application pursuant to ZR §§ 11-412 and 11-413 to permit the change in use from an automotive service station with accessory uses to an automobile repair and muffler installation establishment; and

WHEREAS, on May 2, 1989, the grant was extended and amended to permit a storage container at the site; and

WHEREAS, most recently, on September 12, 2000, the grant was extended for a term of ten years, to expire on January 23, 2009; and

WHEREAS, accordingly, the applicant now seeks an extension of the term of the variance; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide evidence demonstrating that the existing hours of operation (Monday through Saturday, from 8:00 a.m. to 9:00 p.m.) are consistent with similar establishments in the surrounding community; (2) provide photographs showing the removal of tires from the open portions of the site; and (3) provide an amended site plan reflecting the location of the storage container; and

WHEREAS, as to the hours of operation, the applicant states that two nearby automobile-related establishments have similar hours as those proposed; the applicant also notes that many businesses along Northern Boulevard operate 24 hours per day; finally, the applicant represents that the proposed hours are necessary to allow for successful operation of the business; and

WHEREAS, as to the tire storage on site, the applicant provided photographs demonstrating that all tires had been removed from open portions of the site; the applicant also

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provided the requested amended site plan reflecting the location of the storage container; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR § 11-411.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 23, 1979, so that as amended the resolution reads: “to permit an extension of the term of the variance for an additional ten years from the prior expiration, to expire on January 23, 2019; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received June 3, 2014’ – (1) sheet; and on further condition:

THAT the term of the variance will expire on January 23, 2019;

THAT tire will not be stored at the site, except within the building or storage containers;

THAT the hours of operation will be limited to Monday through Friday, from 8:00 a.m. to 9:00 p.m., Saturday from 8:00 a.m. to 6:00 p.m., and closed Sunday;

THAT landscaping will be maintained in accordance with the BSA-approved plans;

THAT the site will be maintained free of graffiti and debris;

THAT only vehicles awaiting service may be stored at the site overnight;

THAT vehicles will not obstruct the sidewalk;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 19, 2014.

169-93-BZ

APPLICANT – Law office of Fredrick A. Becker, for 2231 Associates LLC, owner; TSI West 80, LLC dba NY Sports Club, lessee.

SUBJECT – Application May 5, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 17, 2014. C4-6A/EC-3 zoning district.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a physical culture establishment (“PCE”), which expired on May 17, 2014; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located at the southeast corner of the intersection of Broadway and West 80th Street, within a C4-6A zoning district, within the Special Enhanced Commercial District (“EC-3”); and

WHEREAS, the site is occupied by two adjoining five-story commercial buildings (246 West 80th Street and 248 West 80th Street); and

WHEREAS, the applicant represents that the PCE occupies all of 248 West 80th Street and the second story of 246 West 80th Street, for a total PCE size of 21,458 sq. ft. (a total of 19,163 sq. ft. of floor area on the first through fifth stories and 2,295 sq. ft. of floor space in the cellar); and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, on May 17, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, the operation of a PCE within 248 West 80th Street for a term of ten years, to expire on May 17, 2004; and

WHEREAS, on December 19, 2000, the Board amended the grant to permit expansion of the PCE into the second story of 246 West 80th Street and to modify the hours of operation; and

WHEREAS, most recently, on July 18, 2006, the Board extended the term of the grant for ten years, to expire on May 17, 2014; and

WHEREAS, accordingly, the applicant now seeks a further extension of term; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 17, 1994, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed

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with this application marked 'Received June 23, 2014' - (13) sheets; and *on further condition:*

THAT this grant will be limited to a term of ten years, to expire on May 17, 2024;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the hours of operation will be limited to 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 10:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 19, 2014.

72-11-BZ

APPLICANT – Walter T. Gorman, P.E., for Tanner and Rothafel Partnership, owner; Lukoil, lessee.

SUBJECT – Application June 30, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance for the continued operation of an Automotive Service Station (Getty) which expired on October 25, 2012; Waiver of the Rules. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, southeast corner of 101st Street, Block 1688, Lot 30, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station with accessory uses within an R3-2 zoning district, which expired on October 25, 2012; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in *The City Record*, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown;

and

WHEREAS, the subject site located on a through lot bounded by Astoria Boulevard to the north, 101st Street to the west, and 31st Avenue to the south, within an R3-2 zoning district; and

WHEREAS, the site, which has 10,859 sq. ft. of lot area, is occupied by a one-story gasoline service station (Use Group 16) with 1,196 sq. ft. of floor area (0.06 FAR); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 1959 when, under BSA Cal. No. 711-56-BZ, the Board granted a variance to permit the site to be occupied as a gasoline service station with accessory uses, within a residence district, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times, most recently on October 25, 2011; on that date, under the subject calendar, the Board reinstated the variance and extended its term for ten years, to expire on October 25, 2021; and

WHEREAS, the 2011 grant included a condition requiring that a certificate of occupancy be obtained by October 25, 2012; however, the applicant states that, as of that date, a certificate of occupancy had not been obtained; and

WHEREAS, accordingly, the applicant seeks an extension of time to obtain the CO; and

WHEREAS, the applicant represents that the issuance of the CO has been delayed because the operator took longer than anticipated to remove all debris from the site and install landscaping; and

WHEREAS, at hearing, the Board directed the applicant to provide further information regarding the proposed accessory signage; and

WHEREAS, in response, the applicant states that the signage at the site is being changed from “Getty” to “Lukoil” and that it will comply with the C1 signage regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 25, 2011, so that as amended the resolution reads: “to grant an extension of the time to obtain a certificate of occupancy, to expire on October 25, 2015; *on condition:*

THAT a certificate of occupancy will be obtained by October 25, 2015;

THAT signage will be in accordance with C1 signage regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 19, 2014.

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245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.
SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.
PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over October 28, 2014, at 10 A.M., for continued hearing.

765-50-BZ

APPLICANT – Kenneth H. Koons, for R.G. Ortiz Funeral Home, Ink., owner.
SUBJECT – Application April 14, 2014 – Extension of Term (§11-411) of an approved variance permitting an existing one-story funeral parlor, which expired on November 20, 2013. C1-2 zoning district.

PREMISES AFFECTED – 1430-36 Unionport Road, eastside 43 feet South of Olmstead Avenue, Block 3933, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

997-84-BZ

APPLICANT – Sheldon Lobel, P.C., for 222 Union Associates, owner.

SUBJECT – Application January 23, 2014 – Amendment (§11-413) to a previous variance for a public parking garage. The amendment would convert the building to mixed use, with retail (UG 6) on first floor and cellar, and residential (UG 2) on the second through sixth floors. R6A & C1-1/R6A zoning district.

PREMISES AFFECTED – 798-804 Union Street, 6th Avenue and 7th Avenue, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

68-91-BZ

APPLICANT –Warshaw Burstein, LLP, for Cumberland farms, Ink., owner.

SUBJECT – Application July 1, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted variance for the continued operation of an Automotive Service Station (*Gulf*) which expired on March 12, 2014; Waiver of the Rules. R5D/C1-2 and R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

88-92-BZ

APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of an approved variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.

PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....3

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Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph Dweck, owner.

SUBJECT – Application December 31, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a physical culture establishment (*Dolphin*) on the second floor of a two-story commercial building which expired on January 1, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on February 5, 2009; Waiver of the Rules. C4-2A zoning district.

PREMISES AFFECTED – 8701 4th Avenue, southwest corner of 4th Avenue and 87th Street, Block 6050, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over October 7, 2014, at 10 A.M., for continued hearing.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzhock, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction for a previously granted variance (§72-21) to legalize and enlarge a yeshiva (*Yeshiva Ohr Yitzchok*), which expired on March 23, 2014. M1-1 zoning district.

PREMISES AFFECTED – 1214 East 15th Street, between Avenue L and Locust Avenue, Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (§73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings’ interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, August 19, 2014.

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings’ determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”) on October 1, 2013 (the “Final Determination”), brought by the property owner (the “Appellant”); and

WHEREAS, the Final Determination states, in pertinent part:

First, you claim that the non-conforming use of the Premises has discontinued for more than two years in violation of ZR 52-61 and that therefore, no non-conforming use may remain. In support of your claim, you provide multiple affidavits of neighbors who claim that they have not seen commercial activity at the Premises since September 11, 2001. As stated above, the Department conducted an audit of the Job Application and issued an Intent to

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Revoke letter on June 19, 2013 with an objection citing to ZR 52-61 to “confirm that the non-conforming use has not been discontinued”. In response, the applicant provided sufficient information to show that the non-confirming use had not discontinued for more than two years, including DOF records, utility bills, and aerial photographs.

In addition, the Department’s review of multiple images from Bing.com maps, Google.com maps, and Pictometry.com over a period stretching from 2003 to 2013 indicates commercial activity, including several different trucks and cars in the open space at the Premises and an open gate to the Premises (see attached images). Therefore, based on this information showing continuous commercial use and without additional, verifiable evidence to demonstrate discontinuance of more than 2 years, the Department has no reason to conclude that the non-conforming use discontinued on the basis of the uncorroborated affidavits you provided.

Second, you claim that the use of the open space at the Premises as an eating and drinking establishment is prohibited by ZR 52-34. However, ZR 52-34 does not apply to this change in use because this change of use involves a change from a non-conforming Use Group 16 use to a non-conforming Use Group 8 theater and non-conforming Use Group 6 eating and drinking establishment. Such change is permitted pursuant to ZR 52-332(a) and is not governed by ZR 52-34. Rather, ZR 52-34 only applies to changes in use from Use Group 15 and some below, not to Use Group 16; and

WHEREAS, a public hearing was held on this appeal on January 14, 2014 after due notice by publication in *The City Record*, with continued hearings on April 1, 2014, and June 17, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, former Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located at the corner of Bond Street and DeGraw Street, within an R6B zoning district; and

WHEREAS, the site is occupied by an 8,500-sq.-ft. building, designed for warehouse and office use; and

WHEREAS, this appeal of the Final Determination is brought on behalf of community members and We Are Gowanus (the “Appellant” or “Appellants”) represented by counsel to challenge the legality of the permits issued to the property owner and lessee; and

WHEREAS, the Appellant asserts that the non-conforming use of the premises has discontinued for more than two years in violation of ZR § 52-61, therefore only a

conforming use can occupy the subject site; and

WHEREAS, a supplemental issue on the appeal is that the Appellant asserts that the use of the open space at the building as an eating and drinking establishment is prohibited in accordance with ZR § 52-332; and

WHEREAS, the supplemental issue was not pursued during the course of the appeal; and

WHEREAS, New York State Senator Velmanette Montgomery and New York State Assemblywoman Joan L. Millman provided testimony in support of the appeal, seeking revocation of the permits; and

WHEREAS, DOB and the property owner (the “Owner”), both represented by counsel, appeared and made submissions in opposition to the appeal; and

PROCEDURAL HISTORY

WHEREAS, on October 16, 2012, the Owner filed an Alteration Type 1 application to convert from commercial (Use Group 16 non-conforming use) to theater (Use Group 8), eating and drinking establishment (Use Group 6), and non-commercial art galleries (Use Group 4) to be occupied by the Rock and Roll Playhouse (RRPH); and

WHEREAS, after repeated reviews including examination of the non-conforming uses, DOB approved the application on November 28, 2012 and work permits were issued on April 17, 2013; and

WHEREAS, on June 6, 2013, the Opposition submitted correspondence to DOB requesting that it revoke the permits; and

WHEREAS, DOB conducted an audit of the Job Application and issued an Intent to Revoke letter on June 19, 2013 with an objection citing to ZR 52-61 to “confirm that the non-conforming use has not been discontinued”; and

WHEREAS, in response, the Owner provided information to show that the non-confirming use had not discontinued for more than two years to DOB’s satisfaction; and

WHEREAS, on August 12, 2013, the Opposition filed an Article 78 action seeking an order to compel DOB to issue a response to the Opposition’s Freedom of Information Law (“FOIL”) request; by stipulation, dated September 25, 2013, the parties agreed upon a schedule for DOB’s response and production of documents; and

WHEREAS, on October 31, 2013 DOB issued the Final Determination, which forms the basis of the appeal; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (*Definitions*)

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

* * *

ZR § 52-11 (*Continuation of Non-Conforming Uses*)

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General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 (*Discontinuance*)

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

ZR § 52-332 (*Other buildings or structures in Residence Districts*)

In all #Residence Districts#, a #non-conforming use# listed in Use Group 11A, 16, 17 or 18 which is not subject to the provisions of Sections 52-32 (Land with Minor Improvements) or 52-331 (Buildings designed for residential use), may be changed either to a conforming #use# or:

- (a) to any #use# listed in Use Group 6, 7B, 7C, 7D, 8, 9, 10, 11B or 14, in which case any subsequent change of #use# shall conform to the provisions of Section 52-34 (Commercial Uses in Residence Districts); or
- (b) in accordance with the provisions of the following table:

<u>From Use Group</u>	<u>To Use Group</u>
11A	11A
16 or 17	11A 16 or 17
18	11A 16 17 or 18

provided that such changed #use# shall conform to all regulations on performance standards applicable in M1 Districts, and that any such changed #use#, or the storage of materials or products #accessory# to any changed #use#, which is not located within a #completely enclosed building#, shall be screened by a solid wall or fence (including solid entrance or exit gates) at least eight feet in height. Whenever a #use# located within a #completely enclosed building# is changed to another #use#, no activity related to such changed #use#, including the storage of materials or products, shall be located outside of such #building#.

In no event shall any change of #use# permitted in paragraph (b) of this Section extend the statutory period of useful life applicable under the provisions of Section 52-74 (Uses Objectionable in Residence Districts); and

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within an R6B zoning district and that the

proposed Use Group 8 and Use Group 6 uses are not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming use is permitted to remain, the Owner must meet the Zoning Resolution's criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful use, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: "[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming use"; and

WHEREAS, thus, the Board notes that the standard to apply to the subject use is (1) the use existed lawfully as of December 15, 1961, and (2) that the use did not change or cease for a two-year period since then. See ZR §§ 12-10, 52-61; and

WHEREAS, the question of the use's establishment and continuity are not under dispute, except for the period prior from 2001 until 2014; and

WHEREAS, as noted, the Appellant makes the supplemental argument that the proposed outdoor use is not permitted per ZR § 52-34, however did not pursue the argument throughout the appeal process; and

WHEREAS, the Appellant's position is that the non-conforming use at the site was discontinued for a period longer than two years and, thus, that no non-conforming use is permitted pursuant to ZR § 52-61 and, secondarily that the open space at the site could not be used as an eating and drinking establishment pursuant to ZR § 52-332; and

THE OWNER'S POSITION

- Evidence

WHEREAS, the Owner states that since at least May 1937, the site has been used for commercial use, as indicated on the 1937 Certificate of Occupancy, which reflects "Motor Truck Storage. One family"; and

WHEREAS, the Owner notes that the Certificate of Occupancy issued in February 1938 similarly reflects the use as "Storage Garage for Motor Trucks With One (1) 55 Gal Gasoline Tank in Open Yard" and the last recorded CO, dated April 1967 reflects the following: "First on ground: Loading and storage of boiler equipment. Non-storage garage for motor trucks; Mezzanine: offices"; and

WHEREAS, the Owner states that the Zoning Resolution lists the ground floor uses as Use Group 16 uses and the offices would be classified as accessory Use Group 16 uses; and

WHEREAS, accordingly, the Appellant states that it has

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established that the use was established as of December 15, 1961, prior to the site being zoned with an R6 zoning district where the use is not permitted as of right; and

WHEREAS, the Owner asserts that since December 15, 1961 when the use was no longer permitted pursuant to zoning use regulations, there has not been any discontinuance for a period of two years or greater; and

WHEREAS, however, all parties focus their attention to the period of 1982 to 1985 and 2001 to 2012; and

WHEREAS, the Owner cites to DOB Technical Policy and Procedure Notice #14/1988 (Documentation In Support of Existing Use) (the "TPPN"), which sets forth guidelines for the application of ZR § 52-61 and the submission of proof to DOB in support of non-conforming uses; and

WHEREAS, the TPPN includes the following types of evidence, which DOB accepts: (a) City agency records such as tax records or licenses; (b) records, bills, documentation from public utilities, telephone ads; (c) other documentation of occupancy including ads and invoices; and (d) affidavits; and

WHEREAS, the Owner's evidence within category (a) include: (1) Department of Finance records, (2) utility bills, and (3) aerial photographs, including multiple images from Bing.com maps, Google.com maps, and Pictometry.com during the period of 2003 to 2013, which reflect several different trucks and cars in the open space and an open gate; and

WHEREAS, the Owner submitted the following evidence for 2001: (1) a letter from Robert Grosseto of Superior Tinsmith Supply Co. reflecting its business relationship with Excellence (the "Grosseto Letter") and (2) a letter from Robert Hepplewhite, mechanic, regarding repair of Excellence's commercial vehicles (the "Hepplewhite Letter"); and

WHEREAS, the Owner submitted the following evidence for 2002: (1) eight DOB work permits issued to Excellence; (2) a 1040 tax form reflecting Excellence's income and expenses; (3) Providence Washington Insurance of New York commercial insurance policies with March 26, 2002 commencement date, covering 280 Bond Street; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) a Sanborn Map, which indicates commercial use of the site; (6) an affidavit from accountant Lawrence Bauman stating that he commenced preparing tax returns for the Owner d/b/a Excellence; (the "Bauman Affidavit"); (6) an affidavit from Matthew Germann, tool dealer stating that he visited the site in 2002 and witnessed commercial use (the "Germann Affidavit") (7) the Grosseto Letter; and (8) the Hepplewhite Letter; and

WHEREAS, the Owner submitted the following evidence for 2003: (1) 11 DOB work permits issued to Excellence; (2) a 1040 tax form reflecting Excellence's income and expenses; (3) Providence Washington Insurance of New York commercial insurance policies, covering 280 Bond Street; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) a Sanborn Map,

which indicates commercial use of the site; (6) the Bauman Affidavit; (7) the Germann Affidavit; (8) the Grosseto Letter; (9) the Hepplewhite Letter; and (10) an affidavit from Seth Nahoum, a former Excellence employee stating that Excellence operated at the site (the "Nahoum Affidavit"); and

WHEREAS, the Owner submitted the following evidence for 2004: (1) County Clerk's Office Judgment Docket & Lien Book search summary listing Excellence at the site; (2) nine DOB work permits issued to Excellence; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) Providence Washington Insurance of New York commercial insurance policies, covering 280 Bond Street; (5) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (6) a Sanborn Map, which indicates commercial use of the site; (7) Excellence's Transaction Ledger from City Check Cashing; (8) the Bauman Affidavit; (9) the Germann Affidavit; (10) the Grosseto Letter; (11) the Hepplewhite, Letter; and (12) the Nahoum Affidavit; and

WHEREAS, the Owner submitted the following evidence for 2005: (1) County Clerk's Office Judgment Docket & Lien Book search summary listing Excellence at the site; (2) 25 DOB work permits issued to Excellence; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) Providence Washington Insurance of New York commercial insurance policies, covering 280 Bond Street; (5) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (6) Excellence's Transaction Ledger from City Check Cashing; (7) three client job analyses; (8) a Cassone Leasing invoice for trailer rental at a job site; (9) a Sanborn Map, which indicates commercial use of the site; (10) Worker's Compensation Insurance Premium; (11) the Bauman Affidavit; (12) the Germann Affidavit; (13) the Grosseto Letter; (14) the Hepplewhite Letter; and (15) the Nahoum Letter; and

WHEREAS, the Owner submitted the following evidence for 2006: (1) 34 DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond Street; (5) Excellence's Transaction Ledger from City Check Cashing; (6) Cassone Leasing invoice for trailer rental at a job site; (7) four client job analyses; (8) the Bauman Affidavit; (9) the Germann Affidavit; (10) the Grosseto Affidavit; (11) the Hepplewhite Letter; (12) the Nahoum, Affidavit' (13) a Sanborn Map, which indicates commercial use of the site; and (14) Worker's Compensation Insurance Premium; and

WHEREAS, the Owner submitted the following evidence for 2007: (1) 16 DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond

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Street; (6) Excellence's Transaction Ledger from City Check Cashing; (7) Cassone Leasing invoice for trailer rental at a job site; (8) five client job analyses; (9) the Bauman Affidavit; (10) a letter from accountant indicating net assets; (11) the Germann Affidavit; (12) the Grosetto Letter; (13) the Hepplewhite Letter; (14) the Nahoum Affidavit; (15) a Sanborn Map, which indicates commercial use of the site; and (16) Worker's Compensation Insurance Premium; and

WHEREAS, the Owner submitted the following evidence for 2008: (1) 1096 and 1099 tax forms; (2) 14 DOB work permits issued to Excellence; (3) Department of Finance assessment rolls; (4) a 1040 tax form reflecting Excellence's income and expenses; (5) water, Con Edison, and National Grid bills for the site; (6) partial release of lien; (7) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (8) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond Street; (9) Excellence's Transaction Ledger from City Check Cashing; (10) Cassone Leasing invoice for trailer rental at a job site; (11) three client job analyses; (12) the Bauman Affidavit; (13) accountant's statement of income-profit & loss; (14) the Germann Affidavit; (15) the Grosetto Letter; (16) the Hepplewhite Letter; and (17) the Nahoum Affidavit; and

WHEREAS, the Owner submitted the following evidence for 2009: (1) ten DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) water, Con Edison, and National Grid bills for the site; (5) partial release of lien; (6) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (7) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond Street; (8) Hanover Insurance Group commercial auto insurance policy; (9) Notice of Mechanic's Liens; (10) Excellence's Transaction Ledger from City Check Cashing; (11) an affidavit from Scott Levy, president of Eastern Effects; (12) one client job analysis; (13) the Bauman Affidavit; (14) accountant's statement of income-profit & loss; (15) the Germann, Affidavit; (16) the Grosetto Letter; (17) the Hepplewhite, Letter; and (18) the Nahoum Affidavit; and

WHEREAS, the Owner submitted the following evidence for 2010: (1) four DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) notice of mechanic's liens; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) Scottsdale Insurance Company and Harleysville commercial insurance policies, covering 280 Bond Street; (6) Hanover Insurance Group commercial auto insurance policy; (7) one client job analysis; (8) the Bauman Affidavit; (9) the Grosetto Letter; (10) the Hepplewhite, Letter; and (12) the Nahoum Affidavit; and (13) a Sanborn Map, which indicates commercial use of the site; and

WHEREAS, the Owner submitted the following evidence for 2011: (1) Department of Finance assessment rolls; (2) Con Edison and National Grid account statement for

RRPH; (3) Cole's Directory listing for Excellence; (4) lease agreement for RRPH, which allows for Excellence to maintain its office for business functions until the Addendum is executed; (5) affidavit from Scott Levy, president of Eastern Effects, whose last day of renting the site for truck and lighting equipment storage was August 31, 2011; (6) Cassone Leasing Inc. payment history; (7) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (8) Harleysville commercial insurance policies, covering 280 Bond Street; (9) a fax coversheet from the District Attorney's office listing all properties associated with the Owner, including the site; (10) an affidavit from the Owner noting the transfer from her to SRS Real Estate Holdings; (11) the Grosetto Letter; and (12) the Hepplewhite Letter; and

WHEREAS, the Owner submitted the following evidence for 2012: (1) copy of BIS printout of an Alteration Type 1 application proposing the change of use from commercial (Use Group 16 non-conforming use) to theater (Use Group 8), eating and drinking establishment (Use Group 6) and non-commercial art galleries (Use Group 4), approved by DOB; (2) a BIS printout of post-approval amendment; (3) a DOB Stop Work Order; (4) a DOB BIS Plan Exam approved for building structural modification; (5) DOF assessment roll; (6) a BIS printout of license details which reflects that Excellence maintained general liability insurance with Harleysville Worcester through March 26, 2012; (7) commercial insurance policies with Harleysville insurance through May 22, 2012; (8) lease Addendum between RRPH and SRS Real Estate Holdings to allow rental of the second-story office; (9) email exchange with Verizon which reflects the existence of the Excellence phone line through October 2012; (10) a Sanborn map; (11) Cassone Leasing invoice reflecting the trailer rental at the site; (12) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (13) a Cole's Directory listing for Excellence; (14) affidavits from Larry Burda, general contractor who began working for RRPH at the site and who obtained permits for work there and parked commercial vehicles; (15) the Grosetto Letter; and (16) the Hepplewhite Letter; and

WHEREAS, the Owner submitted the following evidence for 2013: (1) the Final Determination; (2) work permits related to the Alteration Type 1 application; (3) a BIS printout of post approval amendments; (4) DOF assessment roll; (5) Excellence's transaction ledger from City Check Cashing; (6) Cassone Leasing invoice reflecting the trailer rental at the site; and (7) ModSpace Modular Office contract and invoice for RRPH; and

WHEREAS, the Owner submitted the following evidence for 2014: (1) a BIS printout of post approval amendments; and (2) Cassone Leasing invoice reflecting the trailer rental at the site; and

WHEREAS, the Owner asserts that any criticism of the strength of the evidence, the Owner notes that it all fits within the TPPN's (a) through (c) evidence and is reflective of the minimal actual work performed at the site primarily used for

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the storage of materials and vehicles; and

WHEREAS, on the contrary, the Owner claims that the Appellant's evidence is primarily within category (d) – affidavits – which DOB looks to only after satisfactory explanation or proof that the documentation pursuant to category (a), (b), and (c) are unavailable; and

WHEREAS, the Owner asserts that the affidavits lack detail, contain third-party testimony, and are in direct conflict with other evidence the Appellant offered; and

WHEREAS, the Owner also asserts that the Appellant's seven photographs of the site from April 20, 2003 to April 7, 2012 actually reflect the presence of commercial vehicles, in different configurations which is consistent with the movement of vehicles over a period of time when in use; and

WHEREAS, the Owner asserts that the photographs reveal physical evidence that is contradictory to the affiants' statements; and

WHEREAS, the Owner's evidence within category (d) includes affidavits from the two owners which explain that trucks would leave the site by 6:30 a.m. and return prior to 4:00 p.m. as well as letters from individuals and businesses which are either located near the site or have done business with the plumbing business formerly at the site; and

WHEREAS, the Owner provided a lease payment history for the rental of storage trailers at the site by Excellence in Plumbing, including one trailer that was rented from September 2011 until April 2014; work permit data printouts from the Buildings Information System (BIS) showing permits issued to Excellence in Plumbing for work at two different locations in 2010; general liability insurance maintained for Excellence in Plumbing through May 2013; evidence of insurance policies for Excellence in Plumbing operating at the site from March 26, 2009 to March 26, 2013; utility bills issued in November and December of 2011 to the lessees the RRPB; Coles Directory listings for 280 Bond Street from 2010 to 2012 for Excellence in Plumbing and Heating; and

WHEREAS, the Owner states that, despite an October 2011 lease to RRPB it was able to maintain an office in the building until June 2012, after which the lease was modified to allow the tenant's use of the office; and

WHEREAS, based on the above, the Owner contends that it has established that the use has been continuously in existence during the relevant periods; and

WHEREAS, the Owner asserts that the Board should not be guided by the Owner's testimony before the District Attorney which discusses the cessation of the business as (1) there was a context for those statements that is different than the context of establishing the continuation of a non-conforming use under the Zoning Resolution and (2) the Appellant's quotes should not be read in isolation, but with the remainder of the testimony which reflects the Owner's interest in seeking more business rather than abandonment of the site; and

WHEREAS, the Owner states that the deposition testimony is consistent with its position that the business existed but is slow; and

- The Legal Standard

WHEREAS, the Owner asserts that DOB is entitled to deference in its interpretation of the Zoning Resolution, citing the Court of Appeals: "it is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld," Matter of Howard v. Wyman, 28 N.Y.2d 434,438 (1971); and

WHEREAS, the Owner distinguishes the case law that the Appellant cites; specifically, the Owner states that Toys 'R' Us v. Silva, 89 N.Y.2d 411 (1996) centered upon an assertion that only the discontinuance of the entire nonconforming use would constitute the discontinuance required for termination of a nonconforming use; and

WHEREAS, the Owner asserts that an underperforming business, like Excellence in recent years, still qualifies as an active use; and

WHEREAS, otherwise, the Owner distinguishes other cases cited by the Appellant in that (1) none of them involve the applicability of ZR § 52-61; each is set outside New York City; three relate to variances, which require a hardship finding, and are thus inapplicable; the cases discuss intent, which is similarly not a factor in ZR § 52-61

- ZR § 52-332

WHEREAS, the Owner asserts that the Appellant misinterprets ZR § 52-332 in that section (b) makes it clear that the conditions relating to uses located outside of a building only apply to certain use changes and not to the Use Group 16 to Use Group 6 change proposed; and

WHEREAS, accordingly, the proposed outdoor use is permitted; and

THE APPELLANT'S POSITION

- Evidence

WHEREAS, as to ZR §52-61, the Appellant asserts that there have been at least two periods of two years in which the non-conforming use ceased at the site – from 1982 to 1984 and from 2009 to 2012; and

WHEREAS, the Appellant asserts that the Owner's evidence does not include employee records, customer records, or sales receipts, which would be standard for a plumbing business; and the Appellant raises concerns about the majority of evidence the Owner has submitted; and

WHEREAS, the Appellant refutes the Owner's other evidence as follows: (1) federal tax records do not reflect purchase of plumbing supplies after 2008 and no labor expenses or business income after 2009; (2) no customer records have been submitted to demonstrate business transactions; (4) there is no substantiated documents evidencing employee records after 2009 or documentation of work performed; (5) there are not any sales receipts or other records of business transactions after 2009; (6) 2009 and 2010 building permits do not reference 280 Bond Street; (6) the Owner provided sworn testimony with the Manhattan District Attorney's office that the business ceased to exist after 2008; and (7) the parking activity is not consistent with an active business at the site; and

WHEREAS, the Appellant submitted the following

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affidavits and letters in support of its assertion that the non-conforming use ceased for a period greater than two years: (1) an affidavit from Frank Napoli which states that he is a private investigator who interviewed several witnesses with knowledge of the site; (2) and affidavit from Robert Conklin, general contractor, in which he says that for one of the projects associated with building permit evidence (Beach Street) never observed Excellence delivering supplies to the project and that the Owner stated that the warehouse was no longer used for the plumbing business; (3) an affidavit from Leslie Bernat which discusses the Owner stating that he would be retiring and that the business had “wound down”; (4) an affidavit from Jennifer Jones in which she says she has observed a racing car on site; (5) an affidavit from Franck Poisson stating that he sent a certified letter to the address on February 15, 2012, which was returned as undeliverable; (6) an affidavit from Brenda Bello saying that she has parked in front of the steel gage since June 2010 at various times and no one has ever complained or towed her car; (7) an affidavit from Emilie Poisson in which she states that she visited the site in 2012 she did not witness any commercial use; (8) an affidavit from Fernando Serna, who stated that he accompanied Emilie Poisson to the site in March 2012 and did not see any indication of an active business; (9) an affidavit from Bruno Pasquale who stated that in approximately 2009, the Owner stated that he had retired and given up his business; and (10) an affidavit from Jeffrey Tortora who stated that he saw people climbing the walls to gain access to the site, presumably for shelter; and

WHEREAS, the Appellant asserts that there is not any TPPN Category A evidence to support the Owner’s contention that there was an active business from 2009 forward; and

WHEREAS, the Opposition asserts that there is not any TPPN Category B evidence to support the Owner’s contention that there was an active business from 2009 forward; and

WHEREAS, the Appellant asserts that the National Grid and Con Edison account statements for RRPB that the Owner has submitted contradict the contention that Excellence continued an active business at the location until October 2012; and

WHEREAS, the Opposition asserts that there is not any TPPN Category C and D evidence to support the Owner’s contention that there was an active business from 2009 forward; and

WHEREAS, the Appellant states that the Sanborn maps should be disregarded since some are illegible and many relevant years are missing; and

WHEREAS, as to the Cole’s Directory listings, the Appellant questions why there were listings for 2010 to 2012, but not all other years prior and that the telephone number has changed or is inconsistent with that noted in the communication with Verizon regarding the telephone use history; and

WHEREAS, the Appellant questions the lack of specificity in the insurance documents in part because certain policy years cover three locations without specifying any for plumbing business activity; and

WHEREAS, further, the Appellant question whether the insurance companies ever inspected the sites; and

WHEREAS, the Appellant asserts that the Cassone leasing information, City Check Cashing documents, and fax cover sheet from the New York County District Attorney’s office do not establish business activity at the site; and

WHEREAS, the Appellant states that the Nahoum Affidavit concludes that he was no longer visiting the site on a daily basis after 2008; and

WHEREAS, the Appellant states that the information about leasing the parking lot to a film equipment and studio rental business from 2009 to 2011 undermines the Owner’s position as this was an unlawful change of use, even if it were substantiated; and

WHEREAS, the Appellant also asserts that the lease to RRPB does not demonstrate active or related business activity for the period from 2010 to 2012; and

WHEREAS, finally, the Appellant cites to the Owner’s statements in a deposition for the District Attorney in which he states that he did not have wages, employees or business from 2009 to 2011; and

WHEREAS, as to the period from 1982 to 1984, the Appellant states that the Owner states that he began to renovate the property in 1982, completing them in 1983, but that a New York City tax photograph from 1983 reflects the building was abandoned at that time; and

WHEREAS, further, the Appellant asserts that Cole’s Directory lists Excellence as becoming active in 1985; and

WHEREAS, the Appellant states that any use by Eastern Effects was not permitted as the only non-conforming use permitted as to change the use a new CO authorizing it and a Department of Consumer Affairs license was required to substitute a new non-conforming use for an existing non-conforming use; and

WHEREAS, the Appellant asserts that inferences should be drawn from the failure to produce relevant material documents and witnesses; and

WHEREAS, in pursuit of additional information, the Appellant requested the Board to issue subpoenas for records and documents; and

WHEREAS, by letter dated May 5, 2014, the Board’s counsel responded by saying that New York City Charter Section 663 limits the Board’s subpoena authority to testimony and not documents and that the Board has the discretion to exercise its authority to subpoena witnesses, which it has chosen not to do; and

- The Legal Standard

WHEREAS, the Appellant states that the overriding public policy in zoning is aimed at the elimination of non-conforming uses while balancing the interest of not depriving business owners of their businesses; and

WHEREAS, in order to establish the standard for cessation of the use, the Appellant relies on the court’s decision in Toys R Us; and

WHEREAS, specifically, the Appellant is not concerned with the question of whether Excellence once existed as a business at the site, but whether it was continuously active

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there; and

WHEREAS, the Appellant states that the Toys R Us court emphasized that ZR § 52-61 did not equate with the complete stoppage of all business activity at the site and that the Zoning Resolution does not contemplate a complete cessation but rather, the court established that a nonconforming use can be used to sustain a use that is detrimental to the zoning plan for the community *only* if it remains *active*; and

WHEREAS, the Appellant finds that the court emphasized that the evidence to demonstrate a continuation of activity that is in derogation of local zoning must be of an *active* nature to promote the protection of owners of ongoing viable businesses and does not protect businesses that are dormant and exist in name only; and

WHEREAS, the Appellant cites to Toys 'R' Us to support its position that intent, for one thing, is not a factor in the non-conforming use analysis: "intent to resume active operations *shall not affect* the determination whether a nonconforming use has been discontinued;" and

WHEREAS, the Appellant asserts that the law views non-conforming uses as detrimental to a zoning scheme and the overriding policy of zoning in New York State is for the reasonable restriction and eventual elimination of non-conforming uses See Matter of Syracuse Aggregate Corp. v. Weise, 51 N.Y.2d 278; and

WHEREAS, the Appellant asserts that evidence the Owner has produced does not demonstrate the presence of an *active* business between 1982 and 1984 at the site or show how there was an active continuation of business after 2009, and, even more specifically, since 2011; and

WHEREAS, the Appellant asserts that the Owner's lack of evidence contrasts with eyewitness accounts, photographs and other documentary evidence; and

WHEREAS, the Appellant asserts that even though certain evidence may fit within the preferred categories of DOB's TPPN 14 of 1988, it does not establish an active use because, for example, a minimal amount of electricity or evidence of parked vehicles is not sufficient to overcome the basic legal principles governing the extinguishment of non-conforming use; and

- ZR § 52-332

WHEREAS, the Appellant introduced an argument that even if there were a legal non-conforming use, the outdoor Use Group 16 use could not be maintained as a Use Group 6 use; and

WHEREAS, however, the Appellant did not proceed with its argument that in accordance with ZR § 52-332, whenever a non-conforming use that is located within a completely enclosed building is changed to another non-conforming use, no activity related to such changed non-conforming use is permissible outside of such building and, thus, the proposed outdoor use is not permitted; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB states that the Owner has submitted sufficient evidence to show continuous non-conforming commercial use at the site and the Appellant has not

demonstrated that the non-conforming commercial use was discontinued for a continuous period of two years or more; and

WHEREAS, DOB notes that where a Certificate of Occupancy exists permitting a non-conforming use, as is the case here with the 1967 Certificate of Occupancy, it presumes the non-conforming use has continued unless it receives a substantiated complaint that the non-conforming use has ceased for more than two years; and

WHEREAS, accordingly, in this case, the Appellant provided DOB with affidavits from neighbors who claim that they have not seen commercial activity at the site since approximately 2001; and

WHEREAS, at the Appellant's request, DOB conducted an audit which led to the issuance of an Intent to Revoke letter with an objection citing to ZR § 52-61 to "confirm that the non-conforming use has not been discontinued;" and

WHEREAS, DOB states that in response, the Owner provided sufficient information to show that the non-conforming use had not discontinued for more than two years; and

WHEREAS, DOB concluded that the Appellant has submitted sufficient evidence, in keeping with the TPPN and DOB precedent, to establish the use and its continuity as required by ZR § 52-61; and

WHEREAS, conversely, DOB notes that the Appellant submitted affidavits and other uncorroborated evidence; and

WHEREAS, as to the Appellant's concerns about the testimony to the District Attorney, DOB is not persuaded that such isolated statements in a different forum, made for a different purpose, should trump the credible evidence the Owner has submitted to support its claim of continuance; and

WHEREAS, DOB agrees with the Appellant that Sanborn maps are not listed on the TPPN as a type of documentation accepted in support of existing use because the source of the map information is unknown; thus, the maps are considered highly probative as to use and the absence of maps that show the site as commercial is not significant; and

WHEREAS, DOB takes the position that regardless of whether the site was used by Excellence in Plumbing or RRPB, the use by either in a continuing non-conforming use of the site; and

WHEREAS, DOB asserts that the Appellant's concern that the premises as unlawfully from September 2009 to August 2011 to the extent it was leased in part by Eastern Effects for the storage of commercial trucking vehicles, is misplaced since the use is only documented by an affidavit and its nature is unclear; and

WHEREAS, accordingly, DOB concludes that the Appellant has not demonstrated that the alteration permits for a continuing non-conforming use contravene ZR 52-61; and

WHEREAS, as to the Appellant's supplemental argument that ZR § 52-332 does not allow a change in use from a Use Group 16 to a Use group 6, DOB states that the Appellant is incorrect; and

WHEREAS, specifically, DOB states that ZR § 52-332(a) allows a non-conforming use listed in Use Group 16 to

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change to either a conforming use or any use listed in Use Group 6, as proposed; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Owner has met its burden of establishing that the non-conforming use has been in continuous use, without any two-year interruption during all relevant periods addressed in the appeal; and

WHEREAS, specifically, the Board finds the evidence submitted by the Owner sufficient to establish that the use of the site has been continuous since his ownership in 1982 and from 2001 to 2012, without any two-year interruption since that date; and

WHEREAS, as to the evidence submitted by the Owner to establish the continuous use, the Board notes that the Owner provided evidence in the form of photographs, leases, invoices, accounting statements, tax documents, copies of checks, certificates of liability insurance, and letters, and that some combination of this evidence was provided for each year beginning from 2001 until 2012 and later without any gaps; and

WHEREAS, the Board notes that the Owner submitted evidence for each year from 2001 and does not rely on the affidavits alone for any period, in contrast to the Appellant who relies on affidavits as its sole evidence; and

WHEREAS, instead, the Board notes that the Owner relies, in part, on evidence from neutral third-party sources for photographs and records; and

WHEREAS, accordingly, the Board does not need to rely on the affidavits from the Owner and is not persuaded by the Appellant's affidavits which, on their own, are not compelling enough evidence to refute the preferred forms of evidence that the Owner has submitted; and

WHEREAS, as to the question of veracity surrounding certain evidence in light of the Owner's statements to the Manhattan District Attorney, the Board agrees with DOB that those statements were made for a different purpose and in a different forum and, thus, do not have bearing on the evidence submitted to DOB within the Board's process; and

WHEREAS, further, the Board finds that the passages that the Appellant chose may have different meaning when read with the remainder of the statement and that they are not in direct contradiction with other evidence and statements; and

WHEREAS, the Board notes that its analysis is not one of criminal court, taxation, or business practices, but rather involved the review of evidence pursuant to ZR § 52-61; and

WHEREAS, the Board notes that the current Certificate of Occupancy, dated April 6, 1967, permits loading and storage of boiler equipment and non-storage for motor trucks at the first floor and offices at the mezzanine; and

WHEREAS, the Board accepts that a business such as Excellence and the use described on the Certificate of Occupancy is not a conventional commercial business with standard activity and traffic flow; and

WHEREAS, the Board notes that DOB has established guidelines to assess a range of non-conforming uses and finds that the Owner's evidence is relevant to the question of continuity and sufficient, when considered in the aggregate;

and

WHEREAS, the Board notes that it is unclear what amount of activity the Appellant suggests would be required for such work; and

WHEREAS, the Board is not persuaded by the Appellant's reading of Toys 'R' Us that Excellence's operations were inactive to an extent that the continuity was lost; and

WHEREAS, the Board accepts DOB's conclusion that neither the lease to Eastern Effects nor RRPB affects the assessment of continuity; and

WHEREAS, in sum, the Board concludes that the use has been continuous at the site in accordance with ZR § 52-61.

WHEREAS, the Board agrees with DOB's interpretation of ZR § 52-322 and accepts the conclusion that the outdoor use may be converted from Use Group 16 to Use Group 6; and

Therefore it is Resolved that this appeal, challenging a Final Determination issued on October 1, 2013 is *denied*.

Adopted by the Board of Standards and Appeals, August 19, 2014.

92-14-A

APPLICANT – Greenberg Traurig, LLP, for MTS Propco. LPC/Rockpoint Group, LLC, owner.

SUBJECT – Application May 2, 2014 – Variance pursuant to Multiple Dwelling Law Section 310(2)(c) to waive court requirements and legally required windows under MDL Sections 26 and 30 for the construction of a residential addition to an existing hotel . C6-7/C6-6(MID) zoning district.

PREMISES AFFECTED – 790 7th Avenue, West 51st Street, Broadway, West 52nd Street and 7th Avenue, Block 1023, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings Application (“DOB”), dated April 10, 2014, acting on DOB Application No. 121184547 reads, in pertinent part:

The court for the existing transient hotel that is formed by the proposed new building on the same lot is less than the area required; contrary MDL 26;

Legally required windows for the existing transient hotel do not open onto a lawful yard, court, or space above a setback; contrary to MDL 30; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310(2)(c), to permit, on a site located partially within a C6-7 zoning district and partially

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within a C6-6 zoning district, within the Theater Subdistrict of the Special Midtown District, a variance of the court requirements in order to allow the enlargement of the existing building used primarily as a transient hotel, to permit construction of a residential addition, contrary to MDL §§ 26 and 30; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, and then to decision on August 19, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is the city block bounded by Broadway, West 52nd Street, Seventh Avenue, and West 51st Street; it is located partially within a C6-6 zoning district and partially within a C6-7 zoning district, within the Theater Subdistrict of the Special Midtown District; and

WHEREAS, the site has 201.04 feet of frontage along Broadway, 170.92 feet of frontage along West 52nd Street, 200.83 feet of frontage along Seventh Avenue, 161.72 feet of frontage along West 51st Street, and 33,410 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story base building (the "Podium"), which covers the entire site and contains retail uses (Use Group 6), a parking garage (Use Group 8), and the lobby of the hotel (Use Group 5), which for a portion of the site rises 22 stories; the existing floor area of the site is approximately 358,681 sq. ft. (10.7 FAR); the building was constructed prior to December 15, 1961; and

WHEREAS, the applicant proposes to modify the existing building to enhance the hotel and retail space, and to construct a 49-story residential tower with a building height of approximately 601 feet, 109 dwelling units, and a total residential floor area of 165,533 sq. ft.; and

WHEREAS, the applicant states that the construction of the residential tower will form an L-shaped open area between the tower and the hotel portion of the building; the open area is comprised of two overlapping, rectangular inner courts (as that term is defined in MDL § 4(32)): the court to the west of the hotel will have an area of 2,207 sq. ft. and the court to the south of the hotel will have an area of 2,078 sq. ft.; the combined, overlapping courts (the "Inner Court") have a total area of approximately 3,832 sq. ft.; and

WHEREAS, the applicant notes that per MDL § 26(7), the maximum required area for an inner court is 1,200 sq. ft.; and

WHEREAS, the applicant states that 230 legally required hotel windows will face the Inner Court, and 169 of the 230 windows will be separated from the residential tower by distance of 20 horizontal feet; and

WHEREAS, the applicant notes that, per MDL § 26(7), within an inner court, a minimum horizontal distance of 30 feet is required between a legally required window and any wall opposite such window; in addition, per MDL § 30(2),

every living room in a multiple dwelling¹ shall have at least one window directly opening onto a street or upon a lawful yard, court, or space above setback located on the same lot as that occupied by the multiple dwelling; as such, with respect to 169 windows, the Inner Court will not be a lawful court, contrary to MDL § 30(2); and

WHEREAS, accordingly, the applicant seeks a variance to provide a horizontal distance of 20 feet instead of 30 feet, as required by MDL §§ 26(7) and 30; and

WHEREAS, pursuant to MDL § 310(2)(c), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings erected or to be erected or altered pursuant to plans filed on or after December 15, 1961, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the existing building at the site was constructed prior to 1961; however, MDL § 310(2)(c) is applicable to the proposal, because it results in a newly-created non-compliance with respect to MDL §§ 26(7) and 30; and

WHEREAS, pursuant to MDL § 310(2)(c) the Board may vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; and (3) minimum dimensions of yards or courts; and

WHEREAS, in varying or modifying the MDL pursuant to MDL § 310(2)(c), the Board must also find that: (i) the open areas for light and ventilation are "at least equivalent in area to those required" under the MDL; (ii) there are unique physical or topographical features, peculiar to and inherent in the particular premises, including irregularity, narrowness or shallowness of the lot size or shape; and (iii) such variance would be permitted under the Zoning Resolution; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(c)(3); and

WHEREAS, the applicant represents that an unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, to demonstrate that strict compliance with the requirements of MDL §§ 26(7) and 30 would cause unnecessary hardships, the applicant examined the following development scenarios: (1) the construction of a residential tower that provides the required 30-foot distance for all hotel windows (the "As-of-Right Tower"); and (2) the construction of a residential tower that provides the required 30-foot distance between the hotel windows and the eastern façade of the tower (80 rooms) and a 20-foot distance between the hotel windows and the northern façade of the tower (the

¹ Pursuant to MDL § 4(9), transient hotels are considered "class B" multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL.

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“Alternative Tower”); and

WHEREAS, the applicant represents that the As-of-Right Tower would have a building height of approximately 769 feet (168 feet taller than the proposal) and contain 63 stories and 121 dwelling units; and

WHEREAS, the applicants notes that despite the As-of-Right Tower’s significant increase in height over the proposed tower, it would not utilize 15,015 sq. ft. of available floor area; further, the increased height would require thicker shear walls and additional elevator stops and mechanical systems, at significant cost; and

WHEREAS, the applicant represents that the As-of-Right Tower yields 32,939 fewer sq. ft. of marketable space than the proposal, resulting in a loss of \$96,476,026; accordingly, the applicant concludes that there is a practical difficulty in constructing the As-of-Right Tower; and

WHEREAS, the applicant represents that the Alternative Tower would have a building height of approximately 685 feet (84 feet taller than the proposal) and contain 56 stories and 116 dwelling units; as with the As-of-Right Tower, the Alternative Tower’s increased height would require thicker shear walls and additional elevator stops and mechanical systems, at significant cost; and

WHEREAS, the applicant represents that the Alternative Tower yields 9,903 fewer sq. ft. of marketable space than the proposal, resulting in a loss of \$51,351,966; accordingly, the applicant concludes that there is a practical difficulty in constructing the Alternative Tower as well; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of unnecessary hardship in complying with the requirements of MDL §§ 26(7) and 30; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) and 30 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant contends that the primary intent of the court regulations of the MDL is ensure that adequate light and ventilation is provided to rooms in which people spend a substantial amount of time, such as sleeping rooms, living rooms within Class A permanent residential apartments or certain Class B residences, such as dormitories; and

WHEREAS, the applicant asserts that this intent is not substantially furthered by a strict application of the 30-horizontal distance requirement to the subject site; specifically, the applicant states that visitors to the subject hotel—which is in the heart of Times Square—are unlikely to spend a significant amount of time during daylight hours in their hotel rooms; accordingly, it is immaterial to such guests whether light is provided from a space with a distance of 30 feet or 20 feet; further, because the area of the Inner Court is more than twice the maximum required area for a court that complies with the MDL, guests at the subject hotel may receive even more light than guests staying rooms with windows facing minimally compliant courts; and

WHEREAS, the applicant also notes that the 20-foot

horizontal distance provided by the Inner Court is equivalent to the minimum rear yard depth that would be required for a Use Group 5 hotel under the Zoning Resolution; thus, where a transient hotel relies on a yard rather than court for required light and ventilation, such yard is typically no more than 20 feet from the adjoining rear lot line; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL §§ 26(7) and 30 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the applicant states that the open areas for light and ventilation are “at least equivalent in area to those required” under the MDL; and

WHEREAS, as noted above, the applicant asserts that although the minimum distance of the proposed open area is less than required by the MDL, the size of the open area is well in excess of the maximum required area for a court; and

WHEREAS, the Board finds that the proposal provides an equivalent open area for light and ventilation; and

WHEREAS, as to whether there are unique physical or topographical features, peculiar to and inherent in the particular premises, including irregularity, narrowness or shallowness of the lot size or shape, the applicant contends the existing pre-1961 hotel building at the site constitutes a unique physical condition, as that term has been interpreted by the Board; and

WHEREAS, the Board agrees that the existing building at the site constitutes a unique physical condition at the site; and

WHEREAS, finally, the applicant represents and the Board accepts that the proposed MDL variance results in a building that is permitted under the applicable provisions of the Zoning Resolution; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(c) and that the requested variance of MDL §§ 26(7) and 30 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the DOB, dated April 10, 2014, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received May 2, 2014" ten (10) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

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300-08-A

APPLICANT – Law office of Marvin B. Mitzner LLC, for Steven Baharestani, owner.

SUBJECT – Application April 24, 2014 – Extension of time to complete construction and obtain a Certificate of Occupancy for the construction of a hotel under common law vested rights. M1-2 /R5-B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street between 39th and 40th Avenues, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

23-14-A

APPLICANT – Eric Palatnik, P.C., for Cheong Wing Chung & Guo Ying Zhang, owners.

SUBJECT – Application February 5, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district. R2-A zoning district.

PREMISES AFFECTED – 198-35 51st Avenue, 51st Avenue between Weeks Lane and 199th Street, Block 7374, Lot 13, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to

September 23, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

211-12-BZ

CEQR #13-BSA-008K

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown, and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 27, 2012, acting on Department of Buildings (“DOB”) Application No. 320200117, reads in pertinent part:

Proposed two-family residence (UG-2) in manufacturing zone is contrary to Section 42-10; Prior residential use was discontinued for more than two years and cannot be reestablished, per Section 52-61; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the legalization of an existing three-story, two-family residential building (Use Group 2), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 12, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Coffey Street, between Ferris Street and Conover Street, within an M1-1 zoning district; and

WHEREAS, the site has a width of 25 feet, a depth of 100 feet, a lot area of 2,500 sq. ft.; and

WHEREAS, the site is occupied by a three-story residential building with 3,750 sq. ft. of floor area (1.5 FAR) and two dwelling units; and

WHEREAS, the applicant notes that the building was

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constructed in approximately 1909 and was, as according to its only certificate of occupancy (No. 93555, issued September 13, 1939), previously occupied by six families; and

WHEREAS, the applicant states that the current owner purchased the property in January 2010 and, in January 2011, obtained permits to renovate the building and convert it to a two-family residence; and

WHEREAS, the applicant states that work proceeded under the permits in 2011 and was substantially completed by October 2011, when DOB determined that the permits were issued in error and that the residential use became non-conforming as of December 15, 1961, ceased in October 1977, and was not permitted to resume, per ZR § 52-61; and

WHEREAS, accordingly, the applicant now seeks a use variance to legalize the renovated two-family building; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the history of residential use on the site; and (2) the size and narrowness of the site; and

WHEREAS, the applicant states that practical difficulties arise from the historic use of the site for residential purposes; and

WHEREAS, specifically, the applicant states that a residential building has occupied the site for more than 100 years and was recently renovated to reduce the number of dwelling units from six to two; and

WHEREAS, as a result of such renovation, the building is wholly unsuitable for a conforming use, in that it does not have a loading dock, an elevator or a sprinkler system, it has limited floor-to-ceiling heights, and its floors are incapable of carrying the loads imposed by a modern as-of-right (manufacturing or office) use; its mechanical and electrical systems would have to be upgraded as well; and

WHEREAS, the applicant states that, even if the site did not have a history of residential use and even if the building had not been recently redeveloped as a residence, the site's small size and narrowness makes it undesirable for a modern manufacturing use, which requires large, uniform floor plates and wide frontages to accommodate loading; and

WHEREAS, in support of this assertion, the applicant represents that all nearby manufacturing sites have between 65 and 200 feet of lot width compared to the site's width of only 25 feet; and

WHEREAS, as for the feasibility of a commercial use, the applicant states that the site has minimal vehicular and foot traffic and is not marketable for retail or office uses; and

WHEREAS, the Board finds that the site has a combination of unique physical conditions including its history of residential use and its small size and narrowness, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations;

WHEREAS, to satisfy ZR § 72-21(b), in addition to the proposal, the applicant examined the economic feasibility of a building with conforming office and retail uses, and concluded

that only the proposal will result in a reasonable return; and

WHEREAS, based upon its review of the study, the Board agrees that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that residential use is predominant along the stretch of Coffey Street where the site is located, despite its M1-1 designation and that the only building without dwellings near the site is a one-story warehouse directly across the street; and

WHEREAS, the applicant notes that neighboring blocks include multiple dwellings, single-family homes, and an array of low- to mid-rise commercial and industrial buildings; and

WHEREAS, the applicant states that an R5 zoning district is only 150 feet from the 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; accordingly, the proposal, despite being a use variance, would be more consistent with the character of the neighborhood than a conforming use; and

WHEREAS, as to bulk, as noted above, the three-story building has been at the site since the early 1900s and, as such, is similar in appearance and size to the other nearby row houses of a similar vintage; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's historic residential use, narrowness, and small lot size; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-008K, dated July 26, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land

MINUTES

Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the legalization of an existing three-story, two-family residential building (Use Group 2), contrary to ZR § 42-10; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 27, 2012" – four (4) sheets; and on further condition:

THAT the following are the bulk parameters of the building: a floor area of 3,750 sq. ft. of floor area (1.5 FAR); a maximum building wall height of 31'-6"; and two dwelling units, as indicated on the BSA-approved plans;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

311-12-BZ

CEQR #13-BSA-053K

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 5, 2012 acting on DOB Application No. 320536997, reads in pertinent part:

Proposed Use Group 2 residential use in an M1-1 zoning district is contrary to Section 42-00 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the conversion of portions of the second, third, and fourth story of an existing four-story manufacturing building to residential use (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with continued hearings on April 29, 2014, and July 15, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Brooklyn, recommends disapproval of the application; and

WHEREAS, the subject site located on the south side of Dean Street, between Classon Avenue and Franklin Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 78 feet of frontage along Dean Street, 120 feet of lot depth, and approximately 9,350 sq. ft. of lot area; and

WHEREAS, the site is occupied by an four-story manufacturing building with approximately 26,606 sq. ft. of floor area (2.85 FAR); and

WHEREAS, the applicant notes that the building was constructed around the early 20th Century, and has been occupied at various times by a confectionary, a lamp manufacturer, an automobile and electrical parts manufacturer, residential lofts, and a commercial printing company; most recently, portions of the building have been occupied as artists' studios; and

WHEREAS, initially, the applicant proposed to convert the entire building to residential use (26,526 sq. ft. of residential floor area (2.84 FAR) and 13 dwelling units); however, in response to the Board's concerns, the proposal was modified to reflect the conversion of the first story to office use (Use Group 6) and the conversion of the second, third, and fourth stories of the building to residential use (Use Group 2), resulting in a reduction in proposed dwelling units from 13 to nine; and

WHEREAS, thus, the applicant now proposes 7,710 sq. ft. of commercial floor area (0.83 FAR) on the first story

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and a total of 18,522 sq. ft. of residential floor area (1.98 FAR) on the second, third, and fourth stories, for a combined floor area of 26,232 sq. ft. (2.81 FAR); and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-1 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are the site's unique physical conditions, which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the existing building's obsolete characteristics; and (2) the site's limited street access; and

WHEREAS, the applicant states that the building is obsolete for its original industrial purpose; as noted above, the building has been occupied by a variety of commercial and manufacturing uses over the years; however, the building is no longer attractive to conforming use on the upper stories in particular due to its relatively small floorplate, column spacing, archaic layout, inadequate ceiling heights, narrow stairwells and elevator, and its lack of loading berth; and

WHEREAS, as to the size of the floorplate, which is approximately 7,720 sq. ft. on the first, second, and third stories, and 3,368 sq. ft. on the fourth story, the applicant provided a land use study, which reflects that nearby manufacturing and warehouse uses have significantly larger floorplates than the subject building; and

WHEREAS, as to the column spacing and layout of the floors, the applicant asserts that the ubiquitous columns hamper the use of the building for as-of-right uses; specifically, for manufacturers, the columns form narrow maneuvering lanes that inhibit the use of trucks, forklifts, pallet jacks, and hand jacks, making the space inefficient and difficult to market; for retailers, the column condition interferes with the presentation of merchandise and reduces the amount of usable floorspace; storage tenants would also find the space unattractive, because they prefer large, open floorplates, which permit the efficient movement of goods within the facility; and

WHEREAS, as to the ceiling heights, the applicant states that ceiling heights vary from 8'-0" to 11'-0"; and

WHEREAS, the applicant asserts that such heights, when combined with the required 1'-6" clearance between sprinkler heads and any manufacturing operations, render the upper stories wholly unsuitable for conforming uses, such as a wholesale showroom, which would typically have a minimum ceiling height of 14'-0" or a warehouse, which would typically have a minimum ceiling height of 25'-0" to allow the stacking of goods on pallets; and

WHEREAS, as to the existing stairwells and elevator, the applicant asserts that they are inadequate to accommodate the material and personnel movement requirements of a conforming use; and

WHEREAS, specifically, the applicant states that the portions of the stairwells are only 3'-5" in width, which is three inches less than the minimum required under the building code for the manual transport of goods and equipment; in addition, the stairs are steeper than is permitted

for a commercial or manufacturing use (but sufficient for residential use); and

WHEREAS, the applicant also states that the existing elevator has a width of 8'-2", a depth of 8'-4", and a maximum capacity of 4,000 lbs.; in contrast, freight elevators for manufacturing buildings often have depths ranging and from 10'-0" to 22'-0" and capacities of approximately 20,000 lbs.; the applicant notes that even if a modern elevator were installed, the existing elevator shaft is too small to accommodate an elevator that would be suitable for manufacturing use; and

WHEREAS, as to the lack of loading berth, the applicant states that whereas a viable manufacturing or warehouse building would have a loading berth with a depth of approximately 45'-0", the subject building has no loading berth and insufficient space to accommodate a loading berth; and

WHEREAS, in addition to the building's lack of loading berth, the applicant also states that the site's limited street access makes the site unsuitable for the delivery of goods by truck, which is required for both manufacturing and warehouse uses; and

WHEREAS, specifically, the applicant states that the site's only frontage is located along Dean Street, which is a narrow, one-way street; as such, trucks would be forced to block vehicular and pedestrian traffic while loading and unloading, which is both inefficient and potentially hazardous; and

WHEREAS, thus, the applicant contends that there are physical conditions that create practical difficulties in using the building and the site for a conforming use; and

WHEREAS, the applicant also contends that such physical conditions are unique, and submitted a land use study in support of that contention; and

WHEREAS, the applicant states that the study examined 29 sites with existing buildings with the subject M1-1 zoning district in the area bounded by Grand Avenue, Atlantic Avenue, Bergen Street, and Franklin Avenue; according to the study, each site had one or more of the following characteristics, which made it distinguishable from the subject site: (1) frontage on a major thoroughfare (rather than a narrow, one-way street); (2) availability of off-street parking (rather than no off-street parking at the site); (3) larger floorplates than the subject building; and (4) lawful non-conforming residential use; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right office building; (2) a lesser variance with office on the first and second stories and residential on the third and fourth stories; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

MINUTES

WHEREAS, at hearing, the Board directed the applicant to further support its assertion that the subject building was unsuitable for professional office space; and

WHEREAS, in response, the applicant's consultant analyzed 12 nearby office buildings and concluded that each of the 12 was occupied by not-for-profit institutions or government offices; in addition, the majority of buildings studied had a lobby with direct access to the street frontage, which the subject building lacks; as such, the applicant concluded that nearby buildings were not used as professional office space despite having layouts that would be more conducive to professional offices than the subject building; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant represents that the immediate area is characterized by a mix of industrial, commercial and residential uses, with a predominance of residential use, including 69 existing dwelling units within 400 feet of the site and an additional 59 dwelling units approved but not yet constructed; and

WHEREAS, the applicant notes that the subject block is mapped M1-1 only in the mid-block and that R6 zoning districts with commercial overlays are mapped along the eastern (Franklin Avenue) and western (Classon Avenue) sides of the block; and

WHEREAS, as for the immediately adjacent sites, the applicant states that directly east of the site is a three-story warehouse, directly west of the site is a vacant lot used for parking, directly south of the site are two four-story multiple dwellings, and directly north of the site (across Dean Street) is a fenced bus parking lot; and

WHEREAS, as to bulk, the applicant states that although the proposed 2.81 FAR exceeds the maximum permitted FARs in the subject M1-1 district (1.0 FAR for manufacturing uses; 2.4 FAR for community facility uses), the building has existed at the site for nearly 100 years; further, the applicant states that the envelope will not change under the proposal; and

WHEREAS, the applicant notes that the site lies within an Industrial Business Zone and that its proposed use of 85 percent of the building's floor area for manufacturing uses is consistent with that designation; likewise, the applicant asserts that the proposed retail uses will complement (rather than duplicate) local commercial uses and add up to 1,300 jobs to the local economy; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development

of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, likewise, the Board finds, per ZR § 72-21(d), that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief, in accordance with ZR § 72-21(e); as noted above, the scope of the use variance was reduced in response to the Board's concerns; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 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. 13BSA053K, dated July 8, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M1-1 zoning district, the conversion of portions of the second, third, and fourth story of an existing four-story manufacturing building to residential use (Use Group 2), contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 13, 2014" – nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: four stories; a maximum of 7,710 sq. ft. of commercial floor area (0.83 FAR) on the first story and a maximum of 18,522 sq. ft. of residential floor area (1.98 FAR)

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on the second, third, and fourth stories, for a combined maximum floor area of 26,232 sq. ft. (2.81 FAR); a maximum building height of 45'-0"; a minimum rear yard depth of 20'-11"; and a maximum of nine dwelling units;

THAT DOB will review and approve the required light and ventilation for the dwelling units;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

277-13-BZ

CEQR #14-BSA-048M

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of a 12-story, 125 unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), and base and building height (§23-633). R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 18, 2013, acting on DOB Application No. 120024534, reads in pertinent part:

ZR 23-145 – Proposed building exceeds maximum allowable floor area ratio of 4.0 for residential portion;

ZR 23-145 – Proposed lot coverage exceeds maximum allowable lot coverage of 65 percent;

ZR 23-52 – Proposed building does not meet the minimum rear yard requirement;

ZR 23-633 – Proposed building does not comply with the maximum height and setback regulations; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a R7-2 zoning district, the construction of a 12-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, rear yards, and height and setback, contrary to ZR §§ 23-145, 23-52, and 23-633; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with continued hearings on June 17, 2014, and July 15, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Manhattan, recommends disapproval of this application, citing concerns regarding the proposed height, the affordability of the units, and the increased parking demand that will be created by the proposed building; and

WHEREAS, certain members of the surrounding community submitted testimony in opposition to the application (the “Opposition”), citing the following concerns: (1) the proposed height, which the Opposition contends is incompatible with the neighborhood context; (2) the excessive number of studio apartments; (3) the lack of sufficient parking in the neighborhood and the increased parking demand as a result of the proposal; (4) the amount of “green space” to be eliminated in connection with the proposal; (5) the suitability of the bedrock to carry the loads of the proposed building; (6) the risk of harm to persons and property associated with construction near a subway line; (7) the shadows that will be cast by the proposed building; and (8) the lack of affordability of the proposed apartments; and

WHEREAS, the application is brought on behalf of SoBro Development Corporation, the real estate development arm of the South Bronx Overall Economic Development Corporation, a not-for-profit organization, whose stated mission is to enhance the quality of life in the South Bronx by strengthening business and creating innovative economic, housing, educational, and career development programs for youth and adults; and

WHEREAS, the subject site is a narrow, crescent-shaped lot located on the west side of Fort George Hill approximately 155 feet south of the intersection of Nagle Avenue and Fort George Hill, within an R7-2 zoning district; and

WHEREAS, the site comprises Tax Lots 180 and 190, has approximately 456 feet of frontage along Fort George Hill, and 20,444 sq. ft. of lot area; and

WHEREAS, the site is vacant; available records indicate that it has never been developed; and

WHEREAS, the applicant proposes to construct a 12-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 142,195 sq. ft. of floor area (6.97 FAR) (131,848 sq. ft. of residential floor area (6.46 FAR) and

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10,347 sq. ft. of community facility floor area (0.51 FAR)), 73 percent lot coverage, 113 dwelling units, 57 parking spaces, a rear yard depth of 10'-0", and a building height of 146'-1" with no setback; and

WHEREAS, the applicant notes that the proposal is an affordable housing project, with an income range for the dwelling units of 40 percent to 130 percent of area median income, and financing primarily through the New York City Housing Development Corporation, with additional subsidies through the participation of the Department of Housing Preservation and Development, the New York State Energy Research and Development Authority, and Enterprise Community Partners; and

WHEREAS, in order to construct the building as proposed, applicant seeks the following waivers: (1) residential FAR (a maximum residential FAR of 4.0 is permitted, per ZR § 23-145); (2) lot coverage (a maximum residential lot coverage of 65 percent is permitted, per ZR § 23-145); (3) rear yard (a minimum rear yard depth of 15'-0" is required, per ZR § 23-52); and (4) height and setback (a maximum base height of 65'-0" is required with a 10'-0" setback and a maximum building height of 80'-0" is permitted, per ZR § 23-633); and

WHEREAS, the applicant notes that, originally, the proposal included 125 dwelling units (mostly studio and one-bedroom apartments) and only 44 parking spaces, which required a waivers of ZR §§ 23-22 and 25-23; and

WHEREAS, however, in response to concerns raised by the Board, the proposal was amended to provide a complying number of dwelling units and parking spaces; in addition, studio apartments were eliminated entirely from the proposal and the number of two- and three-bedroom apartments were increased; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site's irregular shape; (2) its topography; (3) the adjacency of the elevated subway line; (4) its substandard soil composition; and (5) the presence of a transit easement; and

WHEREAS, the applicant states that the site is narrow and has a crescent shape, measuring 620 feet in length and only 46 feet in width at its widest point; and

WHEREAS, the applicant states that, due to the irregularity of the site, a complying building would be an elliptical building with inefficient floorplates and unmarketable unit layouts; in particular, a double-loaded corridor cannot be constructed on the site; and

WHEREAS, further, the applicant states that a complying building would have unusually high façade construction costs in proportion to the amount of floorspace that may be constructed as-of-right; and

WHEREAS, thus, the site's shape makes the construction of a complying building infeasible; and

WHEREAS, the applicant states that the site also has a unique topography; specifically, the applicant represents that the site slopes downward along Fort George Hill from an

approximately elevation of 79 feet at the southern end to an elevation of approximately 37 feet at the northern end; thus, in order to achieve a uniform basement grade, cuts of five to 50 feet are required, at significant cost; and

WHEREAS, the applicant contends that the site is also uniquely burdened by the presence of the No. 1 subway line tracks and platform for the Dyckman Street station along its western boundary; and

WHEREAS, the applicant states that the site for the subway line drops steeply in elevation from the subject site; as such, extraordinary temporary and permanent safety measures are required to safeguard areas around the subway line, including the construction of additional shoring and retaining walls, and the monitoring of vibrations, all at significant cost; and

WHEREAS, in addition, the applicant represents that the site is burdened by substandard soil; and

WHEREAS, specifically, the applicant states that rock outcroppings are visible throughout the site and that a geotechnical investigation (borings and probes) revealed rock quality to be "very poor", with a percent core recovery measurement of 70.0, a rock quality designation value of 0.0, and sound rock located well below weathered rock; accordingly, the applicant contends that the site's substandard soil creates premium foundation costs; and

WHEREAS, the applicant notes that such premium foundation costs are increased further by the presence of an MTA easement along the southern boundary of the site, which must remain open and protected in perpetuity; and

WHEREAS, based upon the above, the Board finds that the site's irregular shape, sloping topography, the adjacency to the No. 1 subway line, substandard soil composition, and adjacency to a transit easement, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board also notes that a height factor building, which is available in the subject R7-2, is particularly incompatible with the site, given its unusual shape and shallow depth; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility of development of the site with affordable housing in compliance with the Zoning Resolution; and

WHEREAS, the applicant represents that the site's unique conditions create premium construction costs as follows: (1) \$540,000 for the construction of the perimeter retaining wall; (2) \$405,000 for the construction of the footings for the perimeter retaining wall; (3) \$600,000 for the excavation of hard and soft stone; and (4) \$265,000 for shoring and vibration monitoring; thus, the site's premium construction cost total \$2,023,350; and

WHEREAS, the applicant states that an as-of-right building would have 37 dwelling units at a premium construction cost of approximately \$54,685 per unit; in contrast, the proposed building distributes the premium construction costs over 113 dwelling units, at a cost of

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\$17,909 per unit, making affordable housing at the site feasible; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that an affordable housing development in strict compliance with applicable zoning requirements is feasible; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood includes high-density residential buildings, an active commercial district along Dyckman Street, major thoroughfares (the Henry Hudson Parkway, Broadway, and the Harlem River Drive) and parkland (Highbridge Park, Fort Tryon Park, and, further north, Inwood Hill Park); and

WHEREAS, the applicant states that the neighborhood is well-served by public transit, including the No. 1 train and several city bus lines; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site is directly adjacent to the No. 1 train and platform for the Dyckman Street station to the west; south and east of the site are Highbridge Park, and north of the site is the intersection of Nagle Avenue and Fort George Hill; no buildings abut the site, and the nearest building is a four-story utility building that fronts on Hillside Avenue and is separated from the site by the tracks for the No. 1 train; and

WHEREAS, turning to bulk, the applicant states that the proposed 12-story building is contextual with the profile of buildings in the immediate vicinity; while the buildings in the valley west of the train tracks and Nagle Avenue are predominantly five and six stories in height, the four buildings immediately to the south along Fort George Hill are more than 20 stories in height; in addition, there is a cluster of six 14-story buildings northeast of the site along Nagle Avenue; and

WHEREAS, at hearing, the Board: (1) directed the applicant to submit a parking demand analysis; and (2) questioned whether the proposed triple-stacker parking equipment would fit within the cellar; and

WHEREAS, in response, the applicant provided the requested parking demand analysis; in addition, the applicant submitted additional specifications regarding the parking stacker equipment and confirmed that it could be safely operated within the cellar; and

WHEREAS, as to the Opposition and the Community Board's many concerns, the Board notes that three of the major concerns—the height of the building, the parking waiver, and the breakdown of the unit type—were modified during the hearing process; the height was decreased by two stories, the parking waiver was eliminated, and the studio apartments were eliminated; and

WHEREAS, the Board finds that the Opposition's remaining concerns do not form a sufficient basis for the

denial of the variance; as to the amount of "green space" eliminated in connection with the proposal, the Board notes that the proposal complies in all respects with the landscaping and planting requirements of the Zoning Resolution; as to the suitability of the bedrock to carry the loads of the proposed building and the risk of harm to persons and property associated with construction near a subway line, such matters are within the purview of DOB; as to the shadows that will be cast by the proposed building, according to the Phase I environmental site assessment, the proposal does not have a significant adverse impact on shadows; finally, as to the lack of affordability of the proposed apartments, the Board observes that the applicant is a well-established community-based developer of affordable housing and the proposal has garnered support from various city agencies, including the Housing Development Corporation and the Department of Housing Preservation and Development; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site and the applicant's objective to provide affordable housing; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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 I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-048M, dated July 19, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions

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as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within a R7-2 zoning district, the construction of a 12-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for FAR, lot coverage, rear yards, and height and setback, contrary to ZR §§ 23-145, 23-52, and 23-633; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received August 8, 2014”– thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12-stories, a maximum floor area of 142,195 sq. ft. (6.97 FAR), a maximum residential floor area of 131,848 sq. ft. (6.46 FAR), a maximum of 73 percent lot coverage, 113 dwelling units, a minimum of 57 parking spaces, a minimum rear yard depth of 10’-0”, and a maximum building height of 146’-1” with no setback, as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

299-13-BZ

CEQR #14-BSA-066R

APPLICANT – Eric Palatnik, P.C., for David Gerstenfeld, owner; Michael Nejat, lessee.

SUBJECT – Application November 1, 2013 – Special Permit (§73-126) to allow the partial legalization and connection of two adjacent ambulatory diagnostic treatment health care facilities (UG4). R3-A zoning district.

PREMISES AFFECTED – 4299 Hylan Boulevard, between Thornycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39 & 41, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 8, 2013, acting on DOB Application No. 520160218, reads in pertinent part:

Horizontal enlargement to an existing ambulatory diagnostic or treatment health care facility (Use Group 4) located in an R3A zoning district with existing floor area that is in excess of 1,500 sq. ft. is contrary to Section 22-14(A) of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-126 and 73-03, to permit, on a site within an R3A zoning district, within the Special South Richmond Development District, the combination of two existing ambulatory diagnostic treatment health care facilities (Use Group 4) resulting in 4,047 sq. ft. of floor area, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in The City Record, with a continued hearing on July 15, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, certain members of the surrounding community submitted testimony in support of the application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Hylan Boulevard and Winchester Avenue, within an R3A zoning district, within the Special South Richmond Development District; and

WHEREAS, the site, which comprises Tax Lots 37, 39, and 41, has 120 feet of frontage along Hylan Boulevard, 104 feet of frontage along Winchester Avenue, and 12,741 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is occupied by three buildings; Lot 37 is occupied by a one-story, single-family home with 948 sq. ft. of floor area; Lot 39 is occupied by a one-story community facility building (medical office) with 2,989 sq. ft. of floor area; Lot 41 is occupied by a two-story mixed residential and community facility building (medical office) with 2,287 sq. ft. of floor area (1,194 sq. ft. of residential floor area and 1,093 sq. ft. of community facility floor area); thus, the site has a total existing floor area of 6,233 sq. ft. (0.49 FAR)(2,142 sq. ft. of residential floor area (0.17 FAR) and 4,081 sq. ft. of community facility floor area (0.32 FAR)); and

WHEREAS, the applicant notes that in 2011, a breezeway was constructed without a permit between the buildings on Lots 39 and 41; and

WHEREAS, the applicant proposes to demolish the 948 sq.-ft. home on Lot 37, remove approximately 397 sq. ft. of floor area from the building on Lot 39, and enclose and extend the existing breezeway, resulting in the introduction of approximately 363 sq. ft. of floor area, for a net decrease

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in community facility floor area of 34 sq. ft. and a decrease in the total floor area on the lot from 6,233 sq. ft. (0.49 FAR)(2,142 sq. ft. of residential floor area (0.17 FAR) and 4,081 sq. ft. of community facility floor area (0.32 FAR) to 5,242 sq. ft. (0.41 FAR) (1,194 sq. ft. of residential floor area (0.09 FAR) and 4,048 sq. ft. of community facility floor area (0.32 FAR)); and

WHEREAS, the applicant also states that 11 accessory parking spaces will also be provided on the site; and

WHEREAS, the applicant notes that in the subject R3A zoning district, which also within a Lower Density Growth Management Area, an ambulatory diagnostic or treatment facility is limited to 1,500 sq. ft. of floor area, pursuant to ZR § 22-14; however, pursuant to ZR § 73-126, the Board may permit an ambulatory diagnostic or treatment health care facility with maximum floor area of 10,000 sq. ft., provided that: (a) the amount, type, and distribution of open area on the zoning lot are compatible with the character of the neighborhood; (b) the distribution of bulk on the zoning lot will not unduly obstruct access of light and air to adjoining properties or streets; and (c) the scale and placement of the building on the zoning lot relates harmoniously with surrounding buildings; and

WHEREAS, the Board notes that other than the increase in floor area beyond 1,500 sq. ft. authorized by the special permit, the ambulatory diagnostic or treatment health care facility must comply with all zoning parameters of the underlying district; and

WHEREAS, the applicant states that, aside from the requested increase in community facility floor area, the proposal complies in all respects with the zoning parameters of the subject R3A zoning district; and

WHEREAS, the applicant also states that the proposed building will have 4,048 sq. ft. (0.41 FAR) of community facility floor area, which is significantly less than the maximum permitted under the special permit (10,000 sq. ft.); and

WHEREAS, turning to the ZR § 73-126 findings, the applicant contends that the proposal's the amount, type, and distribution of open area on the zoning lot are compatible with the character of the neighborhood; and

WHEREAS, the applicant asserts that the site's proposed open area entirely compatible with the character of the neighborhood and will be significantly increased under the proposal, as noted above; and

WHEREAS, as to the distribution of bulk on the zoning lot and its impacts on the light and air of adjoining properties or streets, the applicant contends that the proposal has no impact on adjoining properties, and provides more light and ventilation than the existing condition; and

WHEREAS, the applicant also states that the proposal includes a significant decrease in floor area and the removal of an entire building and a portion of another, which will enhance the light, ventilation, and privacy of the neighboring residences on Lots 31, 32, 33, and 43; and

WHEREAS, as to the harmoniousness of the building with the surrounding buildings in terms of scale and

placement on the site, the applicant states that, as noted above, the building complies in all respects with the bulk regulations regarding FAR, height, yards, lot coverage, and parking; the applicant also notes that the perimeter of the site adjoining residences will be landscaped, creating an appropriate buffer between the community facility parking areas and the residential uses; and

WHEREAS, at hearing, the Board directed the applicant to remove a non-complying awning sign and to include a note on the proposed plans that lighting will be directed down and away from adjoining residences; and

WHEREAS, in response, the applicant stated that the awning will be removed entirely; the applicant also submitted amended plans that include the note about lighting; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-126; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board also finds that the proposal will not interfere with the renovation of the adjacent fire station, and will otherwise not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

WHEREAS, the project is classified as Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA066R, dated October 31, 2013; and

WHEREAS, the EAS documents that the operation of the facility would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Board has determined that the operation of the facility 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

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Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, within the Special South Richmond Development District, the combination of two existing ambulatory diagnostic treatment health care facilities (Use Group 4) resulting in 4,047 sq. ft. of floor area, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 22, 2014" – Eight (8) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: a maximum total floor area of 5,242 sq. ft. (0.41 FAR), a maximum residential floor area of 1,194 sq. ft. (0.09 FAR), a maximum community facility floor area of 4,048 sq. ft. (0.32 FAR), a maximum lot coverage of 22.6 percent, and 11 parking spaces, as reflected on the BSA-approved plans;

THAT the canopy attached to the building will be removed upon commencement of the proposed construction;

THAT all landscaping will be provided and maintained in accordance with the approved plans;

THAT lighting for the parking areas and signage will be in accordance with the approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

3-14-BZ

CEQR No.14-BSA-096M

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of a school (*Saint David's School*), contrary to lot coverage (§24-11, 24-12), floor area (§24-11), rear yard (§24-36), rear wall setback (§24-552b), base height (§24-522, 24-633), streetwall (§23-692c, 99-051b), maximum height (§99-054b), and enlargement to a non-complying building (§54-31) regulations. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of

Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 26, 2013, acting on Department of Buildings Application No. 121532608, reads in pertinent part:

1. ZR 24-11 & ZR 24-12: Proposed enlargement of a building in R8B and R10/C1-5(MP) zoning districts increases the extent of noncomplying lot coverage as per ZR 24-11 and ZR 24-12.
2. ZR 24-11: Proposed enlargement of a building in R8B zoning district exceeds the maximum permitted floor area as per ZR 24-11.
3. ZR 24-36: Proposed enlargement of a building in a rear yard in R8B and R10/C1-5(MP) zoning districts increases the extent of rear yard non-compliance over 23 feet above curb level as per ZR 24-36.
4. ZR 24-552(b): Proposed enlargement of a noncomplying rear wall without providing a rear wall setback on a building in R8B zoning district increases the extent of rear wall setback non-compliance as per ZR Sec. 24-552(b).
5. ZR 24-522 & 23-633: Proposed addition of penthouse to a building in R8B and R10/C1-5(MP) zoning districts exceeds permitted maximum base height of a street wall, front setback regulations and building height as per ZR 24-522(a) and ZR 23-633.
6. ZR 23-692(c): Proposed addition of a penthouse to a portion of a building with a street wall of less than 45 feet located in an R10/C1-5(MP) district on a corner lot bounded by at least one wide street exceeds maximum permitted building height as per ZR Sec. 23-692(c).
7. ZR 99-051(b): Proposed addition of a penthouse to a portion of a building with frontage on a side street in a R10/C1-5(MP) district increases the extent of the noncomplying street wall and setback regulations as per ZR 99-051(b).
8. ZR 99-054(b): Proposed enlargement to a building in a R10/C1-5(MP) district increases the extent of noncomplying maximum building height as per ZR 99-054(b).
9. ZR 54-31: Proposed enlargement to a

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noncomplying building increases the extent of non-compliances and creates new non-compliance in both R10 and R8B district, contrary to ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and enlargement of two existing buildings, that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR §§ 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, and 54-31; and

WHEREAS, the application is brought on behalf of the St. David's School (the "School"), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 17, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, Carnegie Hill Neighbors and CIVITAS provided testimony in support of the proposal; and

WHEREAS, certain neighbors provided testimony in support of the application; and

WHEREAS, certain neighbors testified in opposition to the application, including residents of the building at 19 East 88th Street who were represented by counsel; and

WHEREAS, those in opposition to the project are collectively, the "Opposition"; and

WHEREAS, the Opposition's primary concerns are that: (1) the School has read the case law on educational deference too broadly and that there are greater limitations on such uses, including that a unique condition be established; (2) the School has failed to establish programmatic needs; (3) the request does not constitute the minimum variance as the height could be reduced if a sub-cellar level were added to accommodate uses that increase the height; (4) the School has created its own hardship by setting a construction schedule only during summer months so as not to inconvenience school operations; (5) architectural and engineering analyses establish that alternative designs, including the inclusion of a sub-cellar level, are feasible; and (6) the School's light and noise from rooftop mechanicals will affect the adjacent residents; and

WHEREAS, the site consists of the Graham House (18-22 East 89th Street a/k/a 1236 Madison Avenue), a former residential hotel purchased by the School in 1972; and three townhouses (12, 14 and 16 East 89th Street) (the "Townhouses") presently housing the School; together,

these four buildings constitute the School's East 89th Street Campus, identified as Lot 62; and

WHEREAS, the School proposes to (1) re-use and convert the Graham House to allow full integration into the East 89th Street Campus; (2) enlarge the townhouse at 16 East 89th Street (the "Townhouse"); and (3) renovate the interiors of the Townhouses; and

WHEREAS, the site is located on the southwest corner of East 89th Street and Madison Avenue, with a total lot area of 15,910 sq. ft., 213.83 feet of frontage on East 89th Street and 25.71 feet of frontage on Madison Avenue; and

WHEREAS, the site is located partially within an R10/C1-5 (MP) zoning district (4,446 sq. ft. or 28 percent) and partially within an R8B district (11,464 sq. ft. or 72 percent); and

WHEREAS, none of the four existing School buildings, built between 1890 and 1920, complies with the Zoning Resolution; specifically, with respect to floor area, FAR, lot coverage, rear yard, front and rear setback, base height and building height in the R8B portion of the zoning lot and with respect to the building height and front wall height and front setbacks in the R10 portion of the zoning lot; and

WHEREAS, further, approximately 33,912 sq. ft. (7.63 FAR) of the existing East 89th Street Campus' 94,105 sq. ft. of floor area is located in the R10/C1-5 (MP) portion of the zoning lot and 60,193 sq. ft. (5.25 FAR) is located in the R8B portion of the zoning lot; and

WHEREAS, the applicant has identified the following existing non-compliances in the R8B zoning district: (1) lot coverage in excess of the 70 percent permitted by ZR § 24-11; (2) floor area (60,193 sq. ft.) and FAR (5.25) in excess of the maximum permitted (58,466 sq. ft. and 5.1 FAR for community facilities by ZR § 24-11); (3) a noncomplying rear yard with a depth of 4.2 feet for the Graham House (a minimum rear yard depth of 30 feet is required above the first story pursuant to ZR § 24-36; (4) a base height of 81.25 feet (the maximum permitted base height is 60 feet on East 89th Street, a narrow street, pursuant to ZR § 24-522(b), 23-633(b)); (5) the absence of a rear setback of ten feet above the maximum base height of 60 feet (ZR §§ 24-552(b), 23-633); (6) the absence of a rear setback of 15 feet above the maximum base height of 60 feet on East 89th Street, a narrow street (ZR § 23-633); and (7) a height of 81.25 feet (a maximum height of 75 feet is permitted (ZR §§ 24-522, 23-633); and

WHEREAS, the applicant has identified the following existing non-compliances in the R10/C1-5 (MP) zoning district: (1) lot coverage in excess of the 75 percent permitted by ZR § 24-11 within the corner lot portion of the zoning lot; (2) a side yard with a width of 1.5 feet (if a side yard is provided, it must have a width of at least eight feet, pursuant to ZR § 24-35); (3) the base height of 81.25 feet (a maximum base height of 60 feet is permitted on East 89th Street, a narrow street, beyond 50 feet of the intersection, pursuant to ZR § 99-051(b)); (4) the Graham House does not provide the required setback of 15 feet above the

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maximum base height of 60 feet on East 89th Street, a narrow street, and does not provide the required setback of ten feet from Madison Avenue, a wide street (ZR § 99-051(b)(3)); (5) the height of 81.25 feet exceeds the maximum height limitation of 80 feet for narrow buildings on Madison Avenue, a wide street, and within 70 feet of Madison Avenue on East 89th Street (Midblock Transition Portion), a narrow street (ZR §§ 99-053, 23-692; and (6) portions of the 81.25-ft. existing east wing of Graham House exceed the maximum building height defined by an inclined plane between 80 and 120 feet within the Midblock Transition Portion of Madison Avenue Preservation District (ZR § 99-054(b)); and

WHEREAS, the proposal triggers the following variance request: within the R8B zoning district: (1) lot coverage of 79.45 percent above the first floor for an interior zoning lot (70 percent is the maximum permitted); (2) a floor area of 63,493 sq. ft. (5.54 FAR) (58,466 sq. ft. (5.10 FAR) is the maximum permitted); (3) the absence of a rear yard (a rear yard with a minimum depth of 30 feet is required above the first story); (4) the absence of a rear setback of ten feet above the maximum rear wall height of 60 feet; (5) a setback with a depth of two feet from East 89th Street for the Penthouse (a setback with a depth of 15 feet from the front wall is required to be provided above a maximum front wall height of 60 feet, an increase in the height of Graham House's East 89th frontage by 11 feet and total height of the Graham House by 17.25 feet, an increase in the townhouse height by 11 feet (a maximum building height of 75 feet is permitted); and (6) proposed enlargement to the non-complying Graham House and Townhouse increases the extent of existing non-compliances, contrary to ZR § 54-31; and

WHEREAS, additionally, within the R10/C1-5 (MP) zoning district, the proposal triggers the following variance requests: (1) the elimination of the non-complying side yard and the existing rear yard in the design of the proposed West Replacement Wing will result in an increase of lot coverage non-compliance for the upper 12.66 feet volume of the second story (between 23 feet and 35.66 feet above grade); (2) the building height of narrow buildings is limited to 80 feet on Madison Avenue, a wide street, and within 70 feet of Madison Avenue on East 89th Street, a narrow street, within the Midblock Transition Portion of Madison Avenue Preservation District, maximum building height is defined by an inclined plane between 80 and 120 feet, the addition of the Penthouse will increase the degree of the existing building's non-compliance with the building height limitations and increase the extent of non-compliance with the height limitations for the enlargement of narrow buildings on both Madison Avenue, a wide street, and East 89th Street, a narrow street, and increase of the non-complying building height from 81.25 to 98.5 feet; (3) the Penthouse does not provide a set back with a depth of 15 feet and thus increases the extent of the front wall's existing non-compliance; (4) full lot coverage at the rear lot line rather than the 30 feet required, however the building out of

the existing sub-standard side yard eliminates that existing non-compliance; and (5) proposed enlargement to the non-complying Graham House increases the extent of existing non-compliances, contrary to ZR § 54-31; and

WHEREAS, the School proposes to demolish all floors of Graham House while retaining and restoring the historically significant Madison Avenue and East 89th Street façades and only as much of the remaining walls, foundation and structure as necessary to maintain the façades' structural integrity; and

WHEREAS, the applicant states that the new construction will replace the demolished area by splitting it into two replacement wings, an East Replacement Wing and a West Replacement Wing; and

WHEREAS, the East Replacement Wing, which is six stories with a mezzanine and penthouse, represents the narrow rectangle of the reconstructed Graham House with a width equal to the zoning lot's 25.71 feet Madison Avenue frontage, with an East 89th Street frontage with a footprint of 1,928.25 sq. ft.; the West Replacement Wing, which is six stories with a mezzanine and penthouse, represents the remainder of Graham House, a 100.71-ft. by 63.83-ft. rectangle with a footprint of 6,428.32 sq. ft. and a 4.2-ft. rear yard above the second story; and

WHEREAS, additionally, the School proposes to add a penthouse to Graham House beginning (the "Penthouse") and a small enlargement to the townhouse (the "Townhouse Addition"); and

WHEREAS, further, the Townhouses will undergo interior renovations under the same permits and as part of the same zoning lot; and

WHEREAS, because of the aforementioned noncompliance, the School seeks a variance; and

WHEREAS, the applicant represents that the waivers are sought to enable the School to construct a facility that meets its programmatic needs; and

WHEREAS, the School identifies the following primary programmatic needs: (1) to consolidate all buildings to the East 89th Street Campus by relocating the off-site physical education program; and (2) to overcome the practical administrative difficulties, including scheduling and space assignments, and programmatic hardships, including curriculum development and teaching, of the current facilities through a comprehensive conversion of Graham House and redevelopment of the Townhouses that will produce a single campus with sufficient facilities, necessary academic adjacencies and required interconnectivity between students and faculty; and

WHEREAS, the School notes the specific needs associated with the requested bulk waivers: (1) filling in the deep non-complying court which bisects the Graham House and the non-complying side yard allows for a viable footprint which eliminates unnecessary travel corridors, and provides space and adjacencies that address the School's educational requirements; (2) 3,300 sq. ft. of additional floor area in the R8B portion of the site allows the School to fill in the deep court on each floor and to relocate program space from areas

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of the Townhouses not formerly included in floor area calculation; (3) the proposed relocation of the rear wall at the ground and second floors to the south property line is required to successfully lay out the auditorium that will be located on the second floor; (4) the increase in the extent of the existing rear yard noncompliance caused by increasing the height of the existing rear wall by 17.25 feet is necessary to support the volume required for the gymnasium proposed on the sixth and penthouse floors; (5) the continuation and increase of the current rear wall setback non-compliance within the R8B portion of the zoning lot is necessary to support the volume required for the gymnasium, the ceiling height of which would be significantly impacted by the resulting complying internal setback; and (6) the two penthouses provide essential ancillary physical education functions adjacent to the large gymnasium, providing training spaces and storage space, they are essential to the physical education program and their location adjacent to gymnasium and lockers is important to the educational time management goals of the School; and

WHEREAS, the School also identifies the following physical conditions of the lot and existing buildings which lead to a hardship: (1) the irregularly-shaped zoning lot is split over two zoning districts, is subject to both corner and interior lot regulations and is further subject to special purpose district regulations which produce conflicting bulk restrictions incompatible with the use of the zoning lot for educational purposes; and (2) the existing buildings have existing non-compliance which would not allow for any enlargement without increasing the degree of non-compliance;

WHEREAS, further, the School notes its location within the Carnegie Hill Historic District, which requires Landmarks Preservation Commission approval which included the requirement to preserve historic architectural elements and led to the increase in the extent of non-compliance in order to accomplish its programmatic objectives; and

WHEREAS, the applicant analyzed two as-of-right alternatives: (1) the rebuilding of Graham House from within without generating new bulk non-compliance or increasing the degree of existing non-compliance and (2) the reduction in the building envelope to comply with building height, lot coverage, and rear yard requirements; and

WHEREAS, as to the first alternative, the applicant states that due to the interlocking current non-compliances regarding height and setback, yards and lot coverage in both the R10/C1-5 and R8B portions of the zoning lot, and the FAR and floor area non-compliances in the R8B portion, the resulting building therefore substantially duplicates the existing footprint and massing; and

WHEREAS, the applicant states that the retention of the deep court above the first floor requires extensive corridors to circumnavigate the court on all floors and the footprints of the existing court and the corridors that must be provided to pass around it represent the floor area lost for School use; and

WHEREAS, the applicant asserts that this is not simply a matter of shrinking rooms and spaces from the plan as proposed, it is the elimination of important new program spaces altogether whose minimal footprints cannot be located

within the as-of-right alternative, which cannot accommodate both the auditorium and the large gymnasium and, thus, will require continuation of the scheduling and administrative burdens associated with converting space functions continuously throughout the day; and

WHEREAS, the first alternative also cannot provide for critical adjacencies among the classrooms, division homerooms, school-wide functions, administrative services and faculty offices and results in reduction or elimination of academic and support space on each floor; and

WHEREAS, the applicant asserts that the second alternative would require combining the auditorium and gymnasium into a single space which compounds the current scheduling conflicts that exceed the School's ability to accommodate all needs within even an extended eight to ten-hour school day; and

WHEREAS, finally, the applicant notes that the proposal is influenced by the substantial amount of rock under the current Graham House building; and

WHEREAS, the applicant submitted engineering reports with soil borings that confirm the existence of rock as shallow as 1.75 feet below the Graham House cellar slab; and

WHEREAS, the applicant states that the impractical construction means and methods that the School would need to excavate below Graham House caused the School at a very early stage in its planning to abandon any thought of excavation as a matter of programmatic necessity due to cost and increased construction time; and

WHEREAS, the applicant states that as a non-profit educational institution, the Board must grant deference to the School and allow it to rely on its programmatic needs to form the basis for its waiver requests; the applicant cites to the decisions of New York State courts in support of its claim that the school warrants deference; and

WHEREAS, specifically, the applicant cites to Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau, 6 N.Y.3rd 407 (2005); the Pine Knolls court stated as follows:

In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public's health, safety, welfare or morals, concerns grounded in the exercise of police power, "with primary consideration given to the over-all impact on the public welfare" (Trustees of Union College, 91 N.Y.2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

We made clear in Cornell University that it is not the role of zoning officials to second-guess expansion needs of religious and educational institutions; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that the School, as a nonprofit New York State chartered educational institution, may rely on its programmatic needs, which further its mission, as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-

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established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board observes that such deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

WHEREAS, the applicant states that the School has adopted a strategic plan to renovate and reuse its buildings in more effective ways; and

WHEREAS, the applicant states that based on an extensive review of its facilities and operations, the School concluded that the proposal was the most efficient and effective use of its educational programmatic space; and

WHEREAS, the applicant concludes that bulk relief is required to meet the School's programmatic needs and the design imperatives of the historic buildings; and

WHEREAS, the Board finds that the proposal has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in Cornell; and

WHEREAS, the Board concurs that the waivers will facilitate construction that will meet the School's articulated needs; and

WHEREAS, in sum, the Board concludes that the applicant has fully explained and documented the need for the waivers to accommodate the School's programmatic needs; and

WHEREAS, the Board also acknowledges the hardship associated with the physical constraints of the buildings, which are approximately a century old, and developing the site with historic pre-existing bulk non-compliance; and the interest in preserving and respecting the buildings' historic fabric; and

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because: (1) the site does not suffer a unique hardship and programmatic needs cannot be substituted as a basis for the requested waivers; and (2) there are negative impacts to the public welfare which are not outweighed by the proposal's benefits; and

WHEREAS, as to the absence of uniqueness, the Opposition contends that the applicant cannot satisfy the finding set forth at ZR § 72-21(a) because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Opposition also argues that the School is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the proposal outweigh the public benefits; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other

evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with Cornell, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board finds that the Opposition misapplies the guiding case law; and

WHEREAS, as to the guiding case law on educational deference, the Board disagrees with the Opposition and finds that the courts place the burden on opponents of a project to rebut the presumption that an educational institution's proposal is beneficial unless it is established to have an adverse effect upon the health, safety, or welfare of the community; the Board notes that courts specifically state that general concerns about traffic and disruption of the residential character of a neighborhood are insufficient basis for denying a request (see Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), Cornell, and Pine Knolls); and

WHEREAS, the Board also does not find any basis for the Opposition's assertion that the School must adopt an alternative in light of the fact that the Board finds the School's programmatic need for the requested waivers to be credible; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see Albany Prep. Charter Sch. v. City of Albany, 31 A.D.3rd 870 (3rd Dep't 2006); Trustees of Union Col. v. Schenectady City Cnl., 91 N.Y.2d 161 (1997)); and

WHEREAS, the Board finds that the Opposition's position is contrary to the decisions of New York State courts and contrary to the Board's many variances for educational institutions which have either been upheld by New York State courts or remain unchallenged; and

WHEREAS, in sum, the Board has reviewed the Opposition's submissions, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposal or to offer evidence, much less establish, that it will negatively impact the health, safety, or welfare of the surrounding community in the sense the courts envision; and

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WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that School's programmatic needs create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a nonprofit institution and each of the required waivers are associated with its educational use and are sought to further its non-profit educational mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant asserts that the noted bulk waivers will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the proposal is compatible with nearby uses and that the Three Townhouses at the site have been used continuously for school purposes since 1963; and

WHEREAS, the applicant asserts that the variances requested are primarily to allow minor modifications of existing non-compliances inherent in the existing historic buildings and will only alter the visible built environment on the East 89th Street Campus in only the following respects: (1) the Penthouse on Graham House, is set back 34.85 feet off Madison Avenue to reduce its visibility, increases the roof height along the length of the Graham House's East 89th Street façade by only 11 feet to a height that is actually lower than the overall building height on the zoning lot; (2) an 866-sq.-ft. continuation of the Penthouse on Graham House, also with a height of 11 feet, added to the rear of the 16 East 89th Street Townhouse as the Townhouse Addition; (3) the rear portion of Graham House will be replaced with a distinctive new structure, eliminating a non-complying side yard, and a partially non-complying court and partially increasing the extent of the existing noncomplying rear yard; and (4) the original architectural features on Graham House will be restored and unattractive fire escapes on the rear and front elevations, will be removed in accordance with LPC approvals; and

WHEREAS, in response to comments from the Board, the applicant revised the original proposal to maintain the existing 4.2-ft. rear yard above the second story; and

WHEREAS, the applicant states that upon completion of construction, the envelope of the East 89th Street Campus will be nearly identical to the historic conditions; and

WHEREAS, further, the applicant notes that the remaining portion of Graham House's east elevation (as seen over the Madison Avenue commercial buildings) will be rebuilt with a new LPC-approved elevation that is supported by Community Board 8 and Carnegie Hill Neighbors, with a massing substantially unchanged but for extending the first and second floors 4.2 feet to the rear lot line and creating a setback above the second floor at a height of 35.66 feet; and

WHEREAS, the applicant notes that the visible and unattractive existing ground-to-roof external fire escapes that now almost fully occupy the 4.2-ft. rear yard will be

eliminated; and

WHEREAS, the applicant notes that the north elevation - the historic East 89th Street street walls of Graham House and the Townhouses - remains largely unchanged except for restoration work on the Graham House façade, the introduction of ground floor doors essential for School egress and the construction of the New Penthouse and Townhouse Addition; and

WHEREAS, further, the applicant states that the penthouses and the re-configured mechanical equipment are set back from the street wall and significantly not visible; and

WHEREAS, the applicant notes that the floor area on the zoning lot is being increased by only 3,763 sq. ft., or 4 percent; and

WHEREAS, the applicant asserts that the block has a mixed use character with five institutions on the north and south sides of East 89th Street between Madison and Fifth avenues; and

WHEREAS, the applicant notes that on the south side, Saint David's, including Graham House, occupies four buildings, or approximately 51 percent of the running length of the block; a residential rental building occupies the tax lot to the west, with a frontage that is approximately 22 percent of the running length; and the new annex to the Guggenheim Museum and the original Frank Lloyd Wright building complete the block; and

WHEREAS, the applicant states that institutional uses occupy 78 percent of the southern side of the street and on the northern side of the street, the National Academy of Design Museum and School, Trevor Day School and the NYC Road Runners Club occupy 40 percent of the frontage and two residential buildings occupy the rest; and

WHEREAS, additionally, at Fifth Avenue, the entire East 88th/89th block frontage is occupied by the Guggenheim Museum and half of the East 89th/90th block frontage is occupied by the Church of the Heavenly Rest; and

WHEREAS, finally, there are additional institutions two blocks further to the north such as the Smithsonian, Spence School, Convent of the Sacred Heart School, the Russian Consulate, Nightingale-Bamford School and the Jewish Museum; and

WHEREAS, because the site is within the Carnegie Hill Historic District, the applicant obtained approval from the Landmarks Preservation Commission ("LPC") by a Certificate of Appropriateness issued July 22, 2014 (when approving the revised proposal); and

WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or parking in the area because the current well-established number of students and faculty using the buildings will be maintained; and

WHEREAS, based upon the above, the Board finds that the subject variances will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property, or be

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detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the physical constraints of buildings built approximately a century ago, which have pre-existing non-complying bulk conditions which constrain any development; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the School or a predecessor in title; and

WHEREAS, the applicant states that the requested bulk waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, the applicant analyzed two lesser scenario schemes, one in which the majority of the rear wall was maintained and one that seeks approval of the height increase and addition of the Penthouse and Townhouse Addition; and

WHEREAS, the applicant concluded that neither alternative can accommodate the School's programmatic needs; and

WHEREAS, however, the School did revise its proposal at the Board's direction to maintain the existing 4.2-ft. rear yard above the second story; and

WHEREAS, the Board therefore finds that the requested waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No.14-BSA-096M, dated January 8, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards

and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and enlargement of two existing buildings, that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR §§ 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 14, 2014" – twenty-one (21) sheets; and *on further condition*:

THAT the proposed buildings will have the following parameters: (1) floor area of 63,493 sq. ft. (R8B zoning district) and 33,577 sq. ft. (with an additional 798 sq. ft. for commercial use) (R10/C1-5 (MP) zoning district); (2) an FAR of 5.54 (R8B zoning district) and 7.55 (with an additional 0.18 FAR for commercial use) (R10/C1-5 (MP) zoning district), (3) a maximum lot coverage of 79.45 percent (R8B zoning district); (4) a maximum wall height of 81.25 feet and total height of 98.5 feet; and (5) all yards and setbacks as depicted on the Board-approved plans;

THAT the site will be maintained in good condition, free of debris;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; and THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

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27-14-BZ

CEQR No. 14-BSA-113M

APPLICANT – Sheldon Lobel, P.C., for 496 Broadway LLC., owner.

SUBJECT – Application February 7, 2014 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar, contrary to use regulations (§42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 496 Broadway, east side of Broadway between Broome Street and Spring Street, Block 483, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 8, 2014, acting on DOB Application No. 104812142, reads, in pertinent part:

ZR 42-14(D)(2)(b) – Proposed change of use below the 2nd floor from Use Group 16 (wholesale) to Use Group 6 (retail) is not permitted in M1-5B zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of an existing retail use (Use Group 6) on the first story and expansion of retail use (accessory storage) into the cellar, contrary to ZR § 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, with a continued hearing on July 22, 2014, and then to decision on August 19, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Broadway between Broome Street and Spring Street, within an M1-5B zoning district, within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 22.25 feet of frontage along Broadway and 2,237 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story building that was constructed in approximately 1866; the last-issued final certificate of occupancy (“CO”) for the building (No. 99266, issued October 7, 1991) authorizes wholesale storage (Use Group 16) in the cellar and on the first story, and joint living-work quarters for artists (“JWLQA”)(Use Group 17D) on the second through fifth stories; and

WHEREAS, the Board has exercised jurisdiction over the site since February 13, 1990; on that date, under BSA Cal. No. 831-89-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude 7,204 sq. ft. of floor area from the computation of the conversion contribution to be paid as required under ZR § 15-50 (Relocation Incentive Contribution); the grant accompanied the conversion of the second through fifth stories of the building from manufacturing use to JLWQA; and

WHEREAS, the applicant notes that the first story of the building has been occupied by various commercial uses since at least 1980 and that, since around 2004, the uses have included clothing and jewelry stores; at present, the first story is occupied by a retail store; and

WHEREAS, accordingly, the applicant seeks legalization of the existing retail use (Use Group 6); in addition, the applicant seeks to use a portion of the cellar as accessory storage for the first story retail use; and

WHEREAS, specifically, the applicant proposes to classify 2,133 sq. ft. of floor area on the first story and 81 sq. ft. of floor space in the cellar as Use Group 6 retail; the applicant notes that the majority of the cellar will remain, per CO No. 99266, Use Group 16 retail storage; and

WHEREAS, because a Use Group 6 eating and drinking establishment is not permitted below the second story in the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the existing building is obsolete for manufacturing use; (2) the site is too small and too narrow to accommodate floorplates for a manufacturing use; and (3) the site is constrained by its location within a historic district; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant states that the building lacks a loading berth and has no space to install one; additionally, the building has limited access, with only two pedestrian-sized doors, one of which is devoted to the JLWQA units on the upper stories, and no elevator; and

WHEREAS, the applicant states the site’s 2,133 sq. ft. of lot area and 22.25-ft. width is far too small to accommodate floorplates that would make the building marketable for a conforming use; and

WHEREAS, the applicant states that 80 percent of the 280 buildings within a 1,000-ft. radius of the site have more lot area than the subject site; in addition, the site is the narrowest site on the entire block and narrower than 90 percent of the 280 buildings within a 1,000-ft. radius of the site; as such, the applicant asserts that its small size and narrow width are unique burdens in the surrounding area; and

WHEREAS, the applicant also notes that only 26 buildings (nine percent) within the study area have both less lot area and a narrower width than the site, and that 24 of the 26 such buildings have Use Group 6 uses on the first story

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1; and

WHEREAS, finally, the applicant asserts that the site's location within the SoHo Cast Iron Historic District, though not unique, contributes to the practical difficulties associated with developing the first story and cellar with a conforming use; and

WHEREAS, specifically, the applicant states that any enlargement, significant alteration or demolition and reconstruction is subject to the approval of the Landmarks Preservation Commission ("LPC"); as such, there are premium construction costs for materials, consulting, and permitting, which cannot be recouped at this site due to the undesirability of the building for a manufacturing use; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant provided a financial analysis for (1) a conforming scenario with permitted uses (Use Groups 7, 9, 11, 16, 17A, 17B, 17C, and 17E); and (2) the proposal; and

WHEREAS, the study concluded that only the proposal would provide a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a predominance of commercial and manufacturing uses; ground floor commercial use is particularly well-established, with every ground floor of every building fronting on Broadway between Spring Street and Broome Street (22 buildings) occupied by ground floor commercial use; and

WHEREAS, the applicant states that the proposed Use Group 6 retail is entirely consistent with the character of the neighborhood; and

WHEREAS, the applicant also notes that, historically, the area has been characterized by ground floor commercial

use, as evidenced by the LPC designation report for the SoHo Cast Iron Historic District; and

WHEREAS, LPC approved the changes legalized under this application by Certificate of Appropriateness, dated May 9, 2008; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-113M, dated February 7, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of an existing retail use (Use Group 6) on the first story and expansion of retail use (accessory storage) into the cellar, contrary to ZR § 42-14(D)(2)(b), *on condition* that any and all work will

1 The applicant notes that of the 24 buildings, seven have Use Group 6 uses authorized by a CO, ten do not have a CO, and seven have Use Group 6 contrary to the CO.

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substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 7, 2014"- eleven (11) sheets; and *on further condition*:

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 19, 2014.

300-12-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Columbia Grammar & Preparatory School, owner.

SUBJECT – Application October 19, 2012 – Variance (§72-21) to permit an enlargement of an existing school building (*Columbia Grammar and Preparatory*), contrary to lot coverage (§24-11), permitted obstruction (§24-33), rear yard equivalent (§24-332), initial setback distance (§24-522), height (§23-692), and side yard (§24-35(b)) regulations. R7-2 zoning district.

PREMISES AFFECTED – 36 West 93rd Street aka 33 West 92nd Street, between Central Park West and Columbus Avenue, Block 1206, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

350-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of an 11-story community facility/residential building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for continued hearing.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for deferred decision.

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

185-13-BZ

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for continued hearing.

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.

SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility.

Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 20 Dea Court, south side of Dea

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Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

222-13-BZ

APPLICANT – Eric Palatnik, P.C., for 2464 Coney Island Avenue, LLC, owner.

SUBJECT – Application July 23, 2013 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C8-1/R5 zoning district.

PREMISES AFFECTED – 2472 Coney Island Avenue, southeast corner of Coney Island Avenue and Avenue V, Block 7136, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

225-13-BZ

APPLICANT – Eric Palatnik, P.C., for Yitta Neiman, owner.

SUBJECT – Application July 25, 2013 – Variance (§72-21) to permit the development of a three-family, four-story residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 810 Kent Avenue, east Side of Kent Avenue between Little Nassau Street and Park Avenue, Block 1883, Lot 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor

area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

265-13-BZ

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*), contrary to floor area (§§23-141, 24-161), maximum dwelling unit (§§23-22, 24-20), maximum building height (§23-631), and minimum parking (§25-25e) regulations. R3A zoning district.

PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for deferred decision.

283-13-BZ

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture

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establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.

SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Brooklyn Athletic Club*). M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

5-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for continued hearing.

48-14-BZ

APPLICANT – Eric Palatnik, P.C., for Vlad Benjamin, owner.

SUBJECT – Application March 26, 2014 – Special Permit (§73-622) for the enlargement of an existing two story single family home, contrary to floor area, lot coverage and open space (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 174 Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot 196, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

50-14-BZ

APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.

SUBJECT – Application April 1, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.

PREMISES AFFECTED – 825 Manhattan Avenue aka 181 Calyer Street, north side of Calyer Street, 25’ west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

52-14-BZ

APPLICANT – Lewis Garfinkel, for Asher Fried, owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1339 East 28th Street, east side of East 28th Street, 320’ south of Avenue M, Block 7664, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing

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closed.

CORRECTION

Jeff Mulligan, Executive Director

This resolution adopted on March 11, 2014, under Calendar No. 274-13-BZ and printed in Volume 99, Bulletin No. 11, is hereby corrected to read as follows:

274-13-BZ

CEQR #14-BSA-045M

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., operator.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2013, acting on DOB Application No. 320782630, reads, in pertinent part:

Proposed physical culture establishment use is not permitted in a C1-3 zoning district, per ZR 32-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment (“PCE”) within the second story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in the *City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application, provided that the hours of operation are limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the subject site is located on the west side of Third Avenue, between 79th Street and 80th Street, within a C1-3 (R6B) zoning district within the Special Bay Ridge District; and

WHEREAS, the site has approximately 60 feet of frontage along Third Avenue and 6,000 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a two-story commercial building with approximately 11,400 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the applicant notes that the first floor of the building is occupied by a grocery store and the second floor is vacant; and

WHEREAS, the applicant notes that the building was constructed in or around 1931 and that the site has been subject to the Board's jurisdiction since July 24, 1959, when, under BSA Cal. No. 398-58-BZ, it granted a variance permitting a factory contrary to use regulations; in addition, later that year, on September 29, 1959, under BSA Cal. No. 399-58-A, the Board granted an appeal waiving the live load requirements for the second story; and

WHEREAS, the applicant states that the manufacturing use remained on the second story until around 1972, when the manufacturer vacated the space, and remained vacant until around 2000, when a martial arts studio leased the space and occupied it until March 2012; and

WHEREAS, the applicant acknowledges that a martial arts studio is a PCE and concedes that a variance was not obtained for the operation of the studio; however, the applicant represents that both the building owner and the martial arts studio were unaware that a martial arts studio is considered a PCE and that PCEs are not permitted within a C1-3 (R6B) district; and

WHEREAS, the applicant now seeks a variance to operate the subject PCE, which will be known as H.I.T. Factory, occupy 5,400 sq. ft. of floor area on the second story, and operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the second floor in conformance with applicable regulations: (1) the second floor's configuration, depth, and size; and (2) its absence of street-level exposure; and

WHEREAS, the applicant states that the historic configuration, depth, and size of the second floor—the characteristics that made it suitable for historic manufacturing use—render it unsuitable for modern conforming uses; and

WHEREAS, specifically, the applicant states that the second floor has a large open floorplate, which would require utilities upgrades and partition construction in order to accommodate a modern business or professional office, at significant cost; and

WHEREAS, the applicant also asserts that the large size (approximately 6,000 sq. ft.) and depth (approximately 90 feet) of the second floor make residential use infeasible; and

WHEREAS, in particular, the applicant states that the second floor would be able to provide a rear yard depth of only ten feet, which is 20 feet less than the minimum required for habitable rooms; accordingly, all dwelling units must use the Third Avenue frontage of the building for required light and ventilation, which effectively prohibits the rear of the building from being converted to residences; and

WHEREAS, the applicant also states that the lack of light and ventilation owing to the building's depth would

further decrease its attractiveness to modern business or professional offices, which prefer natural light; and

WHEREAS, similarly, the second floor's absence of street-level exposure makes it undesirable for local retail and service establishment uses, which rely primarily on pedestrian visibility and convenience of access in order to attract customers; as such, the rent for the second floor must be heavily discounted in order to offset the limitations of the space; and

WHEREAS, the applicant notes that the second floor's unattractiveness to tenants is evidenced by its 28-year vacancy, which, as noted above, began in 1972 and ended when a martial arts studio (a PCE) began occupying the space in 2000; and

WHEREAS, to support its claim of unique hardship, the applicant provided an area study of the 92 buildings within 600 feet of the site; and

WHEREAS, based on the study, only one other building has a second floor non-residential (community facility) use: 7817 Third Avenue, which has a Rite-Aid store on the first floor and "Tutor Time," an infant child care and preschool, on the second floor; and

WHEREAS, however, the applicant asserts that the Tutor Time building is distinguishable from the site, in that it has significantly more lot area (approximately 9,600 sq. ft.) and is located on a corner, where light and ventilation are available for residential or modern office uses; and

WHEREAS, the Board agrees with the applicant that the aforementioned unique physical conditions, when considered together, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in addition to the proposal, the applicant examined the economic feasibility of constructing a conforming office for a single user on the second floor; and

WHEREAS, the applicant concluded that the offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed PCE will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that a PCE occupied the building (albeit without the required variance, as noted above) from approximately 2000 until 2012, and that this

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application has received letters of support from various community organizations as well as the community board; and

WHEREAS, the applicant represents that the surrounding community is characterized by low- to medium-density mixed residential and commercial uses, with many small business that are geared to local residents, and that the proposed PCE is consistent with such uses and will provide a valuable service; and

WHEREAS, as to the PCE's impact, the applicant represents that although light music may be played during workouts, the building's double concrete walls and extra padding will provide ample sound attenuation for both the neighboring buildings, and the grocery store use at the first floor; and

WHEREAS, in addition, consistent with the community board's request, as noted above, the hours of operation for the PCE will be limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the history of manufacturing use on the second floor and the building's depth; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on March 11, 2024; and

WHEREAS, the Department of Investigation performed a background check on the corporate owner and operator of the PCE and the principals thereof, and issued a report which the Board has determined to be satisfactory; 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. 14BSA045M, dated September 23, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment ("PCE") within the second story of a two-story commercial building, contrary to ZR § 32-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 23, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all signage at the site will be limited to C1 zoning district regulations;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the hours of operation for the PCE will be limited to seven days per week, from 7:00 a.m. to 10:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on March 11, 2016;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 11, 2014.

The resolution has been amended to replace the part which read ...two-story residential building... now reads:

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“...two-story commercial building...”. Corrected in Bulletin No. 34, Vol. 99, dated August 27, 2014.

Updated - 8/21/2014

CORRECTION

This resolution adopted on July 15, 2014, under Calendar No. 15-14-BZ and printed in Volume 99, Bulletin Nos. 27-29, is hereby corrected to read as follows:

15-14-BZ

CEQR #14-BSA-103Q

APPLICANT – Davidoff Hatcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Inc., owner.

SUBJECT – Application January 24, 2014 – Variance (§72-21) to permit the enlargement of an existing school building (*Holy Cross Greek Orthodox Church*), contrary to floor area (§24-111), sky exposure plane (§24-54), side yard (§24-35(a)), lot coverage (§24-11), front yard (§24-34), and accessory parking (§25-31). R2 zoning district.

PREMISES AFFECTED – 12-03 150th Street, southeast corner of 150th Street and 12th Avenue, Block 4517, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 27, 2014, acting on DOB Application No. 420927475, reads, in pertinent part:

1. Community facility floor area ratio contrary to ZR Section 24-111;
2. Sky-exposure plane contrary to ZR Section 24-54;
3. Number of parking spaces contrary to ZR Section 25-31;
4. Side yard contrary to ZR Section 24-35(a);
5. Lot coverage contrary to ZR Section 24-11;
6. Front yard contrary to ZR Section 24-34; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding floor area ratio (“FAR”), sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; and

WHEREAS, the application is brought on behalf of Greek Orthodox Community of Whitestone Holy Cross, Inc. (“Holy Cross”), a not-for-profit corporation, which owns and operates Valiotis Greek-American School (“Valiotis”), the existing school at the subject site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication

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in the *City Record*, and then to decision on July 15, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of the application, subject to the following conditions: (1) "One Way" signs are installed at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (2) "One Way" signs are installed indicating "Exit Only" on at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (3) staff will be required to park only in the church parking lot and not on the local streets; (4) all staff cars will be required to park in a predetermined area and stacked next to each other; (5) kindergarteners and first graders will be dismissed 15 minutes early; (6) Valiotis will pursue the installation of a Stop sign at the intersection of 150th Street and 12th Avenue; and (7) Valiotis, Community Board 7, and Councilman Vallone will continue to pursue a request for a crossing guard at the intersection of 150th Street and 12th Avenue; and

WHEREAS, Councilman Paul A. Vallone, submitted testimony in support of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of 12th Avenue and 150th Street, within an R2 zoning district; and

WHEREAS, the site has 125 feet of frontage along 12th Avenue, 100 feet of frontage along 150th Street, and 12,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story school (Use Group 3) with 6,030 sq. ft. of floor area (0.48 FAR) and a building height of 31'-11"; the building was completed in 2004, and, according to Certificate of Occupancy No. 400676559, includes: in the sub-cellar, a gymnasium, assembly space, a mechanical room, a kitchen, and accessory storage; on the cellar level, a child care center for up to 36 children; on the first story, classrooms, offices, and accessory storage; and at the attic level, accessory storage; the four required accessory off-street parking spaces for the building are provided across 12th Avenue in the Holy Cross church parking lot (Block 4516, Lot 1; formerly Block 4516, Lot 50), per restrictive declaration; and

WHEREAS, the applicant notes that an as-built survey revealed that the building was constructed with the following non-compliances: (1) a front yard depth of 14'-0" (a minimum front yard depth of 15'-0" is required, per ZR § 24-34); (2) two side yards with widths of 8'-0" (two side yards with minimum widths of 8'-0" and 10'-2" are required, per ZR § 24-35); and (3) a lot coverage of 66 percent (a maximum lot coverage of 60 percent is permitted, per ZR § 24-11); and

WHEREAS, the applicant now proposes to vertically and horizontally enlarge the building, resulting in a two-story building with 13,967 sq. ft. of floor area (1.11 FAR)

and building height of 34'-3"; and

WHEREAS, the applicant states that the variance is requested to legalize the above-noted non-compliances, which are maintained in the enlarged portion of the building; in addition, the following new non-compliances are proposed: (1) an FAR of 1.11 is proposed (the maximum permitted FAR is 0.5 FAR, per ZR § 24-111); (2) a sky-exposure plane of less than 1-to-1 is proposed (a 1-to-1 sky-exposure plane is required, per ZR § 24-54); and (3) four accessory off-street parking spaces (a minimum of ten accessory parking spaces are required, per ZR § 25-31); and

WHEREAS, the applicant states that Valiotis began as an afternoon Greek School Afternoon Program with three students in 1977 and currently enrolls 180 students in nursery through third grade; the applicant notes that demand for Valiotis has increased sharply since 2008, when enrollment was approximately 30 students; and

WHEREAS, the applicant represents that 35 prospective students were turned away in the 2013-2014 school year because the existing facility is too small to accommodate them; further, approximately 50 students must occupy classroom space in temporary trailers in a nearby site; and

WHEREAS, the applicant states that the proposal would allow Holy Cross to institute a comprehensive elementary school curriculum, consisting of nursery through fifth grade, with a total enrollment of 250 students; and

WHEREAS, the applicant states that the proposed 7,937 sq-ft. enlargement includes the following: on the first story, a new library, a new science lab, a new classroom, and new boys' and girls' restrooms; and on the second story, a new classroom, a new computer room, a new art room, additional storage, and new boys' and girls' restrooms; and

WHEREAS, the applicant states that the following are the primary programmatic needs of Holy Cross, which necessitate the requested variances: (1) to accommodate the needs of its growing congregation of approximately 650 members, many of whom have children enrolled at Valiotis and would like to send them to the school for fourth and fifth grade; (2) to provide interdisciplinary teaching spaces (arts, information technology, and science) in order to prepare its students for modern intermediate and high school curricula; and (3) to provide sufficient space for Holy Cross' Greek School Afternoon and Sunday School programs; and

WHEREAS, the applicant states that there is a direct nexus between the requested waivers and the programmatic needs of Holy Cross; and

WHEREAS, in particular, the applicant asserts that a complying building could not provide adequate classroom and program space for Holy Cross; as noted above, Valiotis was built and received a certificate of occupancy despite several as-built non-compliances; thus, constructing a complying building would require costly demolition of substantial portions of the existing building, resulting in further reductions of program space; and

WHEREAS, as to the new non-compliances associated with the proposed enlargement (FAR, sky-exposure-plane, and

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parking), the applicant asserts that each is essential to constructing a space that will accommodate Holy Cross's needs; the FAR is necessary, as noted above, because the existing school is too small to accommodate even its existing student body (50 students must learn in temporary trailers); the sky-exposure-plane waiver is necessary to provide sufficient headroom in a new classroom on the second story; the parking waiver is necessary because the existing building was constructed without parking and providing parking would require complete renovation and a substantial loss of program space; for example, if parking were to be located in the sub-cellar and/or cellar, Valiotis would be forced to give up portions of its gymnasium and child care center; and

WHEREAS, in addition, the applicant states, as noted above, that Valiotis has four designated parking spaces in the Holy Cross church parking lot across 12th Avenue; under the proposal, the number of designated spaces will be increased to ten; and

WHEREAS, accordingly, the applicant asserts that only the proposal will provide the necessary space for Holy Cross to achieve its programmatic needs at Valiotis; and

WHEREAS, the Board acknowledges that Holy Cross, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building and the site, when considered in conjunction with the programmatic needs of Holy Cross, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Holy Cross is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by one- and two-story residential and community facility uses; south of the site along 150th Street between 12th Road and the Cross Island Parkway, the built character reflects the area's zoning designations (C1-2 and C2-2), in that one- and two-story mixed residential and commercial buildings predominate; and

WHEREAS, the applicant notes that the proposed use exists and is permitted as-of-right in the subject R2 zoning

district; and

WHEREAS, as such, the applicant contends that the proposed enlargement is entirely consistent with the use and bulk of the area; and

WHEREAS, the applicant states that the proposal was designed to be sensitive to the scale of the streetscapes along both 150th Street and 12th Avenue, in that it maintains the existing yards and provides complying wall and building heights; and

WHEREAS, as to adjacent uses, the applicant states that directly south of the site is a two-story community facility building, directly east of the site is an undeveloped lot with a width of 50 feet, directly north of the site (across 12th Avenue) is the parking lot for the Holy Cross church, and directly west of the site (across 150th Street) is a school; the applicant also notes that there is a two-story church north and west of the site, on the northwest corner of the intersection of 12th Avenue and 150th Street; and

WHEREAS, the applicant also notes that the site abuts an R3-2 zoning district, where the maximum permitted FAR for a community facility is 1.0 FAR, which is consistent with the proposed 1.11 FAR; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a site plan of the parking lot at Block 4516, Lot 1, which shows the proposed number of parking spaces, site circulation, and signage; and (2) clarify the proposed traffic mitigation and safety measures; and

WHEREAS, in response, the applicant provided the requested plan, which reflects the proposed parking lot circulation and signage, which includes a single entrance point (the 12th Avenue curb cut) and exit point (the 150th Street curb cut) for the lot; and

WHEREAS, as traffic mitigation and safety, the applicant states that security personnel will be assigned to the site during pickup and drop-off times, dismissal times for pre-kindergarten and kindergarten students will be staggered, and bus queuing and parking will be relocated from 150th Street to 12th Avenue; and

WHEREAS, accordingly, the Board finds that, in accordance with ZR § 72-21(c), this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of Holy Cross could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, per ZR § 72-21(d); and

WHEREAS, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Holy Cross' programmatic needs, in accordance with 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

MINUTES

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

4, 2014 . Corrected in Bulletin No. 34, Vol. 99, dated August 27, 2014.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding FAR, sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 3, 2014” – Nine (9) sheets; and “Received July 14, 2014” – One (1) sheet; and *on further condition*:

THAT the building parameters will be: two stories; a maximum building height of 34’-3”; a maximum of 13,967 sq. ft. of floor area (1.11 FAR); a minimum front yard depth of 14’-0”; two side yards with minimum widths of 8’-0”; and a maximum lot coverage of 66 percent, as illustrated on the BSA-approved plans;

THAT a deed restriction will be recorded against Block 4516, Lot 1 designating minimum of ten parking spaces for the school’s use;

THAT “One Way” signs will be installed and maintained at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT “One Way” signs will be installed and maintained at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT the 12th Avenue curb cut will only be used for entering the parking lot and the 150th Street curb cut will only be used for exiting the parking lot, and signs reflecting these restrictions will be installed and maintained;

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 are considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 15, 2014.

The resolution has been amended to change the plans date which read “June 3, 2014” ...now reads:”June

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September 18, 2014

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Tuesday, September 9, 2014**

Morning Calendar756

Affecting Calendar Numbers:

302-01-BZ	2519-2525 Creston Avenue, Bronx
318-06-BZ	49-05 Astoria Boulevard, Queens
193-12-BZ	384 Lafayette Street, aka 692 Broadway, Manhattan
278-13-A	121 Varick Street, Manhattan
145-14-A	136-16 Carlton Place, Queens
343-12-BZ	570 East 21 st Street, Brooklyn
2-13-BZ	438 Targee Street, Staten Island
264-13-BZ	257 West 17 th Street, Manhattan
271-13-BZ	129 Norfolk Street, Brooklyn
297-13-BZ	308 Cooper Street, Brooklyn
327-13-BZ	1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, Brooklyn
8-14-BZ	1824 East 22 nd Street, Brooklyn
17-14-BZ	600 McDonald Avenue, aka 14 Avenue C, aka 377 Dahill Road, Brooklyn
21-14-BZ	115-02 Jamaica Avenue, Queens
64-14-BZ	1320 East 23 rd Street, Brooklyn
123-14-BZ	855 Avenue of the Americas, Manhattan
144-14-BZ	1751 Park Avenue, Manhattan

DOCKETS

New Case Filed Up to September 9, 2014

199-14-A

102-11 Roosevelt Avenue, North side 175.59 feet West of 103rd Street, Block 1770, Lot(s) 47, Borough of **Queens, Community Board: 4**. Proposed legalization of accessory parking in open portion of site that lies within a bed of mapped street pursuant to Section 35, Article 3 of the General City Law. R6B/C1-4 in R6B district.

200-14-BZ

46-05 Parsons Boulevard, Corner of 46th Avenue and Parsons boulevard, Block 5462, Lot(s) 3, Borough of **Queens, Community Board: 7**. Variance (§72-21) proposed to construct a community facility in an R2 zoning district seeking waivers of floor area ratio, sky exposure plane, side yards and parking. R2 district.

201-14-BZ

3524 Third Avenue, North East corner and East 168th Street, Block 2610, Lot(s) 1, Borough of **Bronx, Community Board: 3**. Special Permit (§73-36) to allow a physical Culture Establishment on the ground floor of an existing on-story and cellar commercial building at 3524 Third Avenue, located within an M1-1/R7-2 Zoning district. M1-1/R7-2(MX7) district.

202-14-BZ

2268 West 1st Street, West side of West 1st Street between Village Road South and Avenue West, Block 7151, Lot(s) 13, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement and conversion of an existing two family residence to a single family residence, located within an R4(OP) zoning district. R4(OP) district.

203-14-BZ

18 West 8th Street, South side of West 8th Street, 97.2 feet east of intersection of West 8th Street and MacDougal Street, Block 551, Lot(s) 23, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36):to permit a physical culture establishment within portions of an existing commercial building. C4-5 zoning district. C4-5(LC) district.

204-14-BZ

55 Wythe Avenue, Located between North 12th Street and North 13th Street, Block 2283, Lot(s) 1, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic or treatment health care

facilities listed in Use Group 4 and PRC-B1 per ZR44-21 sub-note 3 and ZR 73-44. M1-2 district.

205-14-BZ

100-02 Rockaway Boulevard, Southeast c corner of intersection of Rockaway Boulevard and 100th Street, Block 9539, Lot(s) 1, Borough of **Queens, Community Board: 10**. Special Permit (§73-36) to allow for a physical culture establishment within a portion of an existing commercial building. M1-1 zoning district. M1-1 district.

206-14-BZ

910 Lanark Road, Clustered in the Broad Channel neighborhoods, Edgemere/Somerville and Rockaway Park neighborhoods of Community District 14, Block 15500, Lot(s) 62, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district. R3-2 district.

207-14-BZ

41 West 12th Road, Clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and Rockaway Park Neighborhoods of Community District 14, Block 15316, Lot(s) 64, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district. R3-2 district.

208-14-BZ

119 East 7th Road, Clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and Rockaway Park neighborhoods of Community District 14., Block 15454, Lot(s) 21, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 district.

209-14-BZ

592 Beach 43rd Street, Clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and Rockaway Park neighborhoods of Community District 14 in Queens, Block 15961, Lot(s) 102, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in

DOCKETS

the NYC Build it Back Program. R4-1 zoning district. R4-1 district.

210-14-BZ

69-52 Thursby Avenue, Clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and rockaway Park neighborhoods of Community District 14 in Queens, Block 16050, Lot(s) 63, Borough of , **Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.R4A zoning district. R4-A district.

211-14-BZ

3-41 Beach 87th Street, Clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and rockaway Park neighborhoods of Community District 14 in Queens, Block 16119, Lot(s) 101, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district. R4-1 district.

212-14-BZ

209A Beach 100th Street, Clustered in Broad Channel neighborhoods, Edgemere/Somerville, and Rockaway Park neighborhoods of Community District 14 Queens., Block 16156, Lot(s) 94, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5D zoning district. R5-D district.

213-14-BZ

165 Wooley Avenue, Woolley Avenue between Lathrop and Garrison Avenues, Block 419, Lot(s) 13, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to per the construction of a 2-story single family detached home with cellar located within an R2 zoning district. R2 district.

214-14-A

50-11&15 103rd Street,, Corner of 103rd Street and Alstyne Avenue, Block 1930, Lot(s) 50, Borough of **Queens, Community Board: 4**. Proposed legalization and completion of four ,three-story three-family semi-detached residential buildings located partially in an bed of a mapped street and permit the development of adequate parking for a total of four three-story family residence.R5 Z R5 district.

215-14-BZ

50-11&15 103rd Street, Corner of 103rd Street and Alstyne Avenue, Block 1930, Lot(s) 4, Borough of **Queens, Community Board: 4**. Variance (§72-21) to permit four-three-story three family semi-detached residential building at the existing premises in an R5 zoning district pursuant to GCL 35. R5 district.

216-14-BZ

150 Amsterdam Avenue, Northwest corner of Amsterdam Avenue and West 66th Street, Block 1158, Lot(s) 7507/129, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36 to permit the legalization of an physical culture establishment located on portions of the first floor and cellar of the existing building located within an R8 zoning dist8irct. R8/C2-5 district.

217-14-BZ

245 West 17th Street, North side of W. 17th Street, 325' east of 8th Avenue, between 7th and 8th Avenue, Block 767, Lot(s) 15, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36 to allow for the legalization of a Physical Culture Establishment (Flywheel) on a portion of the first floor of the building and a portion of the cellar, located within an C6-2A zoning resolution. C6-2A district.

218-14-A

46-03 88th Street, Within a bed of 45th Avenue at intersection of 88th Street, Block 1584, Lot(s) 16, Borough of **Queens, Community Board: 4**. Proposed construction of a four-story residential building for eleven units within the bed of 45th Avenue at its intersection with a bed of unmapped street, contrary to GCL 35. R5 zoning district . R5 district.

219-14-BZ

64 DeGraw Street, South side of DeGraw Street between Columbia and Van Brunt Streets, Block 329, Lot(s) 6, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to allow the construction of a three-story, single-family residence with one parking space, located within an M1-1 zoning district. M1-1 district.

220-14-BZ

8 Underhill Avenue, West side of Underhill Avenue between Atlantic avenue and Pacific Street., Block 1122, Lot(s) 37, Borough of **Brooklyn, Community Board: 8**. Variance (§72-21) to allow the construction of a three-story single family residence, located within and M1-1 zoning district M1-1 district.

DOCKETS

221-14-BZ

10 Underhill Avenue, West side of Underhill Avenue between Atlantic Avenue and Pacific Street, Block 1122, Lot(s) 37, Borough of **Brooklyn, Community Board: 8.** Variance (§72-21) to allow the construction of a three-story single family residence, located within an M1-1 zoning district. M1-1 district.

222-14-BZ

344 East63rd Street, bounded by East 63rd Street and 1st Avenue, Block 1437, Lot(s) 29, Borough of **Manhattan, Community Board: 8.** Special Permit (§73-36) to allow for Physical Culture Establishment on a portion of the ground floor and cellar of the existing building located within an C2-8 and R8Bzoning district. C2-8 &R8B district.

223-14-BZ

1963 McDonald Avenue, , Block 6685, Lot(s) 62, Borough of **Brooklyn, Community Board: 15.** Variance (§72-21) to request a variance of (23-141) maximum floor area ratio, lot coverage (33-26), and (23-47) rear yard, to legalize the existing building both a house of worship and a community facility uses, located within a (OPD) but primarily within R5/C2-4 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

SEPTEMBER 23, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 23, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

698-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application May 21, 2014 – Amendment of a previously approved variance to permit the conversion of the convenience store to a relocate and re-size curb cuts and to legalize the existing remediation equipment and location of the tanks and permit additional trees on the site. C2-2 zoning district.

PREMISES AFFECTED – 2773 Nostrand Avenue, northeast corner of Kings Highway and Nostrand Avenue, Block 7684, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #18BK

902-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) to an existing buildings (4-story, (12-story), and 3-story) building from manufacturing to residential use on the ground floor. M1-6 zoning district.

PREMISES AFFECTED – 116-118 West 29th Street, south side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49, 50, Borough of Manhattan.

COMMUNITY BOARD #5M

1096-79-BZ & 1097-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 120 & 114 West 29th Street, south side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49 (aka 52), Borough of Manhattan.

COMMUNITY BOARD #5M

148-03-BZ

APPLICANT – Goldman Harris LLC, for The Flower House Condominium, owners; Northwest Real Estate LLC, lessee.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 111/113 West 28th Street, north side of West 28th Street between Sixth and Seventh Avenue, Block 804, Lot(s) 1101-1105, Borough of Manhattan.

COMMUNITY BOARD #5M

162-95-BZ & 163-95-BZ

APPLICANT – Warshaw Burstein, LLP, for Mario Bonavita, owner; Pelham Bay Fitness Group, LLC, owner.

SUBJECT – Application April 25, 2014 – Extension of Term of a previously approved Special Permit (§73-36) on the first and mezzanine floor of the existing building to allow for its continued operation. C2-4 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, southeast side of Westchester Avenue between Mahan Avenue and Hobart Avenue, Block 4196, Lot(s) 9, 11, 13, Borough of Bronx.

COMMUNITY BOARD #10BX

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application July 22, 2014 – Extension of Time to Complete Construction of a previously granted Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home which expired on January 27, 2013; Waiver of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, between Oriental Boulevard and Hampton Street, Block 8749, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #15BK

159-08-BZ

APPLICANT – Jay A. Segal for Greenberg Traurig, LLP, for DJL Family Limited Partnership, owners.

SUBJECT – Application July 18, 2014 – Extension of time to complete construction and Waiver of Rules of Procedure, for a project approved on February 10, 2009, to construct a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, between

CALENDAR

Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

**57-09-A thru 112-09-A
129-09-A thru 152-09-A**

APPLICANT – Eric Palatnik, P.C., for Maguire Woods Estates, owners.

SUBJECT – Application May 14, 2014 – Application to permit an extension of time to complete construction and obtain a certificate of occupancy under the previously granted Common Law vested rights for a residential development approved under the prior zoning district regulations. R3-2(SSRD) zoning district.

PREMISES AFFECTED – Santa Monica Lane, El Camino Loop, Moreno Court, Block 6979, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

95-14-A

APPLICANT – Bernard Marson, for BBD & D Ink., owner.
SUBJECT – Application May 5, 2014 – MDL 171 & 4.35 to allow for a partial one-story vertical enlargement (*Penthouse*) of the existing 3 story and basement building located on the site. Pursuant to the 310 MDL. R8 zoning district.

PREMISES AFFECTED – 237 East 72nd Street, north Side of East 72nd Street 192.6' West of 2nd Avenue, Block 1427, Lot 116, Borough of Manhattan.

COMMUNITY BOARD #8M

ZONING CALENDAR

30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to ZR§36-11. R6/C2-2 zoning district

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

323-13-BZ

APPLICANT – Eric Palatnik, P.C., for Galt Group Holdings, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to permit the proposed alteration, which

will enlarge the footprint and include a vertical enlargement at the rear portion of the existing four story, plus cellar and basement contrary to lot coverage §23-145. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 127 East 71st Street, East 71st Street between Park and Lexington Avenues, Block 1406, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #8M

53-14-BZ

APPLICANT – Evolution Muay Thai LLC, for 12 West 27 Land, L.P., owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Evolution Muay Thai*). M1-6 zoning district.

PREMISES AFFECTED – 12 West 27th Street, 2nd floor, between Broadway and 6th Avenue, Block 828, Lot 56, Manhattan.

COMMUNITY BOARD #5M

97-14-BZ

APPLICANT – Warsaw Burstein, LLP, for 22-26 East 14 Condominium, owner; 22 East 14th St. Fitness Group, LLC, lessee.

SUBJECT – Application May 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on portions of the ground and cellar levels of the existing building. C6-1 zoning district.

PREMISES AFFECTED – 22-26 East 14th Street, between 5th Avenue and University Place, Block 571, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

105-14-BZ

APPLICANT – Lewis E. Garfinkel, for Caren May, owner.

SUBJECT – Application May 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1224 East 27th Street, west side of East 27th Street, 175' south from Avenue L, Block 7644, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

130-14-BZ

APPLICANT – Francis R. Angelino, Esq., 605 fifth Property Owner, LLC, owner; Chiva-Som Spa, lessee.

SUBJECT – Application June 11, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Chiva-Som Spa*) will be on the entire fifth floor of a six-story commercial building, located within a C5-3 zoning district.

CALENDAR

PREMISES AFFECTED – 605 Fifth Avenue, east Side Fifth Avenue between East 48th & 49th Streets, Block 1284, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

132-14-BZ

APPLICANT – Warshaw Burstein, LLP, for 441 Rockaway, LLC, owner; 441 Rockaway Ave. Fitness Group, LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building, located within a C4-3 zoning district.

PREMISES AFFECTED – 441 Rockaway Avenue, frontage on Rockaway Avenue and Thatford Avenue, south of Pitkin Avenue, Block 3522, Lot(s) 9, 26, Borough of Brooklyn.

COMMUNITY BOARD #16BK

206-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 910 Lanark, Queens. Block 15500, Lot 602.

COMMUNITY BOARD #14Q

207-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 41 West 12th Road, Queens. Block 15316, Lot 64.

COMMUNITY BOARD #14Q

208-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 119 East 7th Road, Queens. Block 15454, Lot 21.

COMMUNITY BOARD #14Q

209-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 592 Beach 43rd Street, Queens. Block 15961, Lot 102.

COMMUNITY BOARD #14Q

210-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4A zoning district.

PREMISES AFFECTED – 69-52 Thursby Avenue, Queens. Block 16050, Lot 63.

COMMUNITY BOARD #14Q

211-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 3-41 Beach 87th Street, Queens. Block 16119, Lot 101.

COMMUNITY BOARD #14Q

212-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5D zoning district.

PREMISES AFFECTED – 209A Beach 100th Street, Queens. Block 16156, Lot 94.

COMMUNITY BOARD #14Q

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 9, 2014
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson and Commissioner Ottley-Brown.

SPECIAL ORDER CALENDAR

302-01-BZ

APPLICANT – Deirdre A. Carson, Esq. for Creston Avenue Realty LLC, owner.

SUBJECT – Application May 28, 2014 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on December 11, 2013. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, West side of Creston Avenue between East 190th and East 191st Streets. Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #7BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown3

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

318-06-BZ

APPLICANT – Eric Palatnik, LLP for Sun Company Inc. (R&M), owner.

SUBJECT – Application August 9, 2013 – 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 22, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on November 22, 2007; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, Noreast corner of Astoria Boulevard and 49th Street. Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

193-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Vornado Realty Trust., owner; Soulcycle 384 Lafayette Street, LLC., lessee.

SUBJECT – Application March 11, 2014 – Amendment to permit the enlargement of a previously approved special

permit (§73-36) for a physical culture establishment (*SoulCycle*). M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street aka 692 Broadway and 2-20 East 4th Street, southwest corner of Lafayette Street and East 4th Street, Block 531m Kit 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown3

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

278-13-A

APPLICANT – Slater & Beckerman, P.C., for 121 Varick St. Corp., owner.

SUBJECT – Application September 27, 2013 – Appeal of Department of Buildings’ determination that the advertising sign was not established as a lawful non- conforming use. M1-6 zoning district/SHSD.

PREMISES AFFECTED – 121 Varick Street, southwest corner of Varick Street and Dominick Street, Block 578, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

145-14-A

APPLICANT – Yuk Lam, for XU M Hui, owner.

SUBJECT – Application June 23, 2014 – Proposed four-story building not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law.

PREMISES AFFECTED –136-16 Carlton Place, between Linden Place and Leavitt Street, Block 4960, Lot 62, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown3

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

ZONING CALENDAR

343-12-BZ

APPLICANT – Akerman Senterfitt, LLP., for Ocean Ave Education Support, Inc., owner.

SUBJECT – Application December 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Brooklyn School for Medically Frail Children*) with dormitory facilities in a split zoning lot, contrary to lot coverage(§24-11), yard requirements (§24-382, §24-393, §24-33) and use regulations (§22-13). R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, between Dorchester Road and Ditmas Avenue, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.
SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to allow a physical culture (*Brick CrossFit*) on the ground floor and cellar of an existing 10-story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

271-13-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for continued hearing.

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a three-story, six-unit residential building, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Off-Calendar.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces from 346 to 272 spaces for a mixed use building containing UG4 health care and UG 6 office uses. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

8-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Oleg Saitskiy, owner.

SUBJECT – Application January 16, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141); side yards requirements (§23-461) and less than the rear yard requirement (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1824 East 22nd Street, west side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

MINUTES

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) to add a third and fourth floor to an existing school building (*Congregation Chasidei Belz Beth Malka*), contrary to floor area (§24-11) lot coverage, maximum wall height (§24-521), side yard (§24-35), front yard (§24-34) and rear yard (§24-361) regulations. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

21-14-BZ

APPLICANT – Eric Palatnik, P.C., for FSJ Realty Group LLL., owner; Crunch Richmond Hill, LLC., lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Crunch Fitness*). C2-4/R6A zoning district.

PREMISES AFFECTED – 115-02 Jamaica Avenue, southeast corner of Jamaica Avenue and 115th Street, Block 9305, Lot(s) 2 and 11, Borough of Queens.

COMMUNITY BOARD #9Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown3
Negative:.....0
Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

123-14-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson LLP, for 855 MRU LLC., owner.

SUBJECT – Application June 3, 2014 – Special Permit (§73-36) to allow the operation of physical culture establishment in portion of the cellar and first floor of the existing building. C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 855 Avenue of the Americas, between 30th Street and 31st Street, Block 806, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown3
Negative:.....0
Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

144-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Park 121 Realty LLC., owner; Leake & Watts Services Inc. Children's Learning Center, lessee.

SUBJECT – Application June 20, 2014 – Special Permit (§73-19) to allow for a Use Group 3 special education preschool on the second floor of an existing building. M1-4 district.

PREMISES AFFECTED – 1751 Park Avenue, east side of Park Avenue between East 122nd Street and East 121 Street, Block 1770, Lot(s) 72, 4, 3, 2, 1, 101, Borough of Manhattan.

COMMUNITY BOARD #11M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown3
Negative:.....0
Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for decision, hearing closed.

BULLETIN

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Tuesday, September 16, 2014**

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New Case Filed Up to September 16, 2014

224-14-BZ

1534 Victory Boulevard, South side of Victory Boulevard, between Slosson Avenue and Royal Oak Road, Block 695, Lot(s) 81, Borough of **Staten Island, Community Board: 1.** Variance (§72-21) to for ambulatory diagnostic or healthcare treatment facility (medical office) (UG 4) located in an R1-2 zoning district. Also a companion GCL 35 as portion of the roadway is within an mapped street. R1-2 district.

225-14-A

1534 Victory Boulevard, South side of Victory Boulevard, between Slosson Avenue and Royal Oak Road, Block 695, Lot(s) 81, Borough of **Staten Island, Community Board: 1.** Propped construction of a proposed private front roadway that is located within an existing widening line of the mapped portions of Victory Boulevard, pursuant to Section 35 of the General City Law. R1-2 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.

CALENDARS

OCTOBER 7, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 7, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC., owner.

SUBJECT – Application January 9, 2014 – Amendment (§11-412) to convert existing automotive service bays into an accessory convenience store and enlarge the accessory building at an existing gasoline service station. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, southwest corner of Victory Boulevard and Manor Road, Block 709, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

964-87-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilt Petroleum, Ink., owner; Lotus Management Group II, LLC, lessee.

SUBJECT – Application April 21, 2014 – Amendment to a previously approved Variance for the operation of an Automotive Service Station (UG 16B), with accessory uses.

The Amendment seeks to convert a portion of a service bay to an accessory convenience store; Extension of Time to obtain a Certificate of Occupancy which expired on May 10, 2012; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 786 Burke Avenue, aka 780-798 Burke Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12B

203-92-BZ

APPLICANT – Jeffrey Chester, Esq., for Mowry Realty Associates LLC., The Fitness Place Forest Hills NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Lucille Roberts Gym*), which expired on March 1, 2014. C2-3(in R5D) zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side of Austin Street between 70th Avenue and 70th Road, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center INK., owner.

SUBJECT – Application April 21, 2014 – Extension of Term of a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (Stillwell Sports Center); Amendment to permit minor alterations; Exertion of Time to obtain a Certificate of Occupancy which expired on January 1, 2012; Waiver of the Rules. C8-2 zoning district.

PREMISES AFFECTED – 2402 86th Street, south Corner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEALS CALENDAR

106-14-A

APPLICANT – Greenberg Traurig, LLP., for 84 William Street Property Owner LLC.

SUBJECT – Application May 22, 2014 – Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30 for the construction of residential apartments to an existing building. C5-5 (LM) zoning district.

PREMISES AFFECTED – 84 William Street, northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #10M

142-14-A

APPLICANT – Goldman Harris LLC., for 92 Henry Fulton LLC., owner.

SUBJECT – Application June 17, 2014 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C6-4 zoning district.

PREMISES AFFECTED – 92 Fulton Street, south side of Fulton Street, between William Street to the West and Gold Street to the east, Block 77, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

ZONING CALENDAR

174-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for 58-66 East Fordham Road, owner; LRHC Fordham Road LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) the reestablishment of an expired physical culture establishment (*Lucille Robert*), contrary to Section 32-31 zoning resolution. C4-4 zoning district.

PREMISES AFFECTED – 2449 Morris Avenue a/k/a 58-66 East Fordham Road, Block 3184, Lot 45, Borough of Bronx.

COMMUNITY BOARD #7BX

38-14-BZ

APPLICANT – Eric Palatinik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

59-14-BZ

APPLICANT – Caroline G. Harris, for School Settlement Association Ink., owner.

SUBJECT – Application April 10, 2014 – Variance (§72-21) to permit the construction of a four-story plus penthouse community facility (UG 4), contrary to (24-11). R6B zoning district.

PREMISES AFFECTED – 114-122 Jackson Street, located on the SW corner of the Intersection of Jackson Street and Manhattan Avenue. Block 2748, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

104-14-BZ

APPLICANT – Warsaw Burnstein, LLP., for Sam Spikes, LLC, owner; 287 Broadway Fitness Group, LLC., lessee.

SUBJECT – Application May 15, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on a portion of the ground and second floors of a new building. Located in C4-3 zoning district.

PREMISES AFFECTED – 282 South 5th Street aka 287 Broadway, between Broadway and West of Marcy Avenue, Block 2460, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #1BK

117-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Trinity Episcopal School Corporation, owner; Trinity Housing Comp. Inc., lessee.

SUBJECT – Application June 3, 2014 – Variance (§72-21) to permit the enlargement of a school (*Trinity School*), including construction of a 2-story building addition with rooftop turf field, contrary to required rear yard equivalents, lot coverage, height and setback, and minimum distances between buildings. Split zoning lot within R7-2 and C1-9 zoning districts.

PREMISES AFFECTED – 101 W 91st Street, 121 & 139 W 91st St and 114-124 W 92nd St, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17, 29, 40, 9029, Borough of Manhattan.

COMMUNITY BOARD # 7M

141-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP., for 24655 Broadway Associates, owner; Soul Cycle 2465 Broadway, LLC, lessee.

SUBJECT – Application June 23, 2014 – Special Permit (§73-36) to all a physical culture establishment (*SoulCycle*) with portions of an existing commercial building, located within a C4-6A zoning district.

PREMISES AFFECTED – 2465 Broadway, east side of Broadway, 50ft. south of intersection of West 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

MINUTES

REGULAR MEETING TUESDAY MORNING, SEPTEMBER 16, 2014 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez.

SPECIAL ORDER CALENDAR

765-50-BZ

APPLICANT – Kenneth H. Koons, for R.G. Ortiz Funeral Home, Ink., owner.

SUBJECT – Application April 14, 2014 – Extension of Term (§11-411) of an approved variance permitting an existing one-story funeral parlor, which expired on November 20, 2013. C1-2 zoning district.

PREMISES AFFECTED – 1430-36 Unionport Road, eastside 43 feet South of Olmstead Avenue, Block 3933, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0
Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting a funeral parlor in a C1-2 (R6) zoning district, which expired on November 20, 2013; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, with a continued hearing on August 19, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Unionport Road, between Olmstead Avenue and Odell Street, within a C1-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since July 14, 1953, when, under the subject calendar number, the Board granted an application to permit, in a residence district, the construction of a one-story addition to and the continued operation of an existing funeral parlor, contrary to the use and bulk regulations of the 1916 Zoning Resolution; under the original grant, the Board limited to the use to a term of 20 years; and

WHEREAS, the grant has been amended and extended at various times over the years, most recently on June 14,

2005, when the Board extended the term for ten years, to expire on November 20, 2013; and

WHEREAS, the applicant now seeks an additional extension of term; and

WHEREAS, at hearing, the Board expressed concerns regarding the lack of landscaping at the site; and

WHEREAS, in response, the applicant submitted photographs depicting the planting of evergreens along the eastern and northern lot lines; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, the Board has determined that the evidence in the record supports the finding required to be made under ZR § 11-411.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 14, 1953, so that as amended the resolution reads: “to permit the extension of the term of the variance for an additional ten years from November 20, 2013 expiring on November 20, 2023; on condition on condition that all work will substantially conform to drawings, filed with this application marked ‘Received April 4, 2014’– (4) sheets; and on further condition:

THAT the term of the variance will expire on November 20, 2023;

THAT there will be a minimum of ten parking spaces at the site;

THAT the premises will be maintained free of debris and graffiti;

THAT any graffiti located on the premises will be removed within 48 hours;

THAT the above conditions will appear on the certificate of occupancy;

THAT conditions from prior resolution(s) not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 200926098)

Adopted by the Board of Standards and Appeals, September 16, 2014.

427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

MINUTES

PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an amendment to legalize the construction of an accessory convenience store on a site subject to a variance authorizing an automotive and gasoline service station (Use Group 16) within an R4 zoning district; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 29, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the southwest corner of the intersection of Beach Channel Drive and Beach 38th Street, within a C2-2 (R4) zoning district; and

WHEREAS, the site has 151.75 feet of frontage along Beach Channel Drive, 120 feet of frontage along Beach 38th Street, and approximately 15,095 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 3,032 sq. ft. of floor area (0.20 FAR); the building contains a convenience store accessory to an automotive and gasoline service station (Use Group 16); and

WHEREAS, the Board first exercised jurisdiction over the site in the mid-1940s, when, under BSA Cal. No. 479-44-BZ, it granted an application to permit an automotive and gasoline service station in a residence use district contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, on February 23, 1971, under the subject calendar number, the Board permitted, pursuant to ZR §§ 11-412, 11-413, and 72-21, the enlargement of the lot area and reconstruction of an automotive service station with accessory uses; at the time, the site was within an R4 zoning district; the Board did not limit the operation of the use to a term; and

WHEREAS, subsequently, the grant was amended at various times; in addition, the site has been rezoned from R4 to C2-2 (R4); and

WHEREAS, the applicant represents that in 2007, the building was enlarged without the Board’s authorization and pursuant to an erroneously-issued DOB permit; and

WHEREAS, accordingly, the applicant now seeks an amendment to legalize the enlargement; the enlargement reflects an increase in floor area from 450 sq. ft. (0.03 FAR) to 3,032 sq. ft. (0.20 FAR); the maximum permitted FAR for a commercial use at the site is 7,547 sq. ft. (0.50 FAR); and

WHEREAS, the applicant states that the enlarged building complies with DOB Technical Policy and Procedure Notice No. 10/1999, which sets forth the requirements for convenience stores accessory to gasoline and automotive service stations; and

WHEREAS, at hearing, the Board directed the applicant: (1) remove excessive signage at the site; (2) enclose the garbage area; and (3) provide a proper buffer between the site and adjacent residential uses; and

WHEREAS, in response, the applicant submitted amended plans, which reflect signage in accordance with C2 regulations, newly-planted trees along the property line, and relocated trash receptacles; and

WHEREAS, based on its review of the record, the Board finds that the requested legalization is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated February 23, 1971, so that as amended the resolution reads: “to permit the noted modifications; *on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received August 26, 2014’-(7) sheets; and on further condition:

THAT the building will be limited to a maximum of 3,032 sq. ft. of floor area (0.20 FAR);

THAT the site will be maintained free of debris and graffiti;

THAT signage will be in accordance with C2 regulations;

THAT landscaping and buffering will be maintained in accordance with the BSA-approved plans;

THAT lighting will be directed downward and away from adjoining residences;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 16, 2014.

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68-91-BZ

APPLICANT –Warshaw Burstein, LLP, for Cumberland farms, Ink., owner.

SUBJECT – Application July 1, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted variance for the continued operation of an Automotive Service Station (*Gulf*) which expired on March 12, 2014; Waiver of the Rules. R5D/C1-2 and R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0
Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for an automotive service station (Use Group 16B), which expired on March 12, 2014; and

WHEREAS, a public hearing was held on this application on August 19, 2016, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the site is located on the northwest corner of the intersection of Springfield Boulevard and Union Turnpike, partially within a C1-2 (R5D) zoning district and partially within an R2A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 1942 when, under BSA Cal. No. 150-41-BZ, the Board granted a variance to permit the construction of a gasoline service station (and a single-family residence), for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on November 5, 1985; and

WHEREAS, on May 19, 1992, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station; this grant has been amended and extended at various times, most recently on March 12, 2013, for a term of ten years, to expire on May 19, 2022; and

WHEREAS, a condition of the most recent grant was that the certificate of occupancy was to be obtained by March 12, 2014; however, as of that date, a certificate of occupancy had not been obtained; and

WHEREAS, accordingly, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that the issuance of the

certificate of occupancy has been delayed by the existence of several open Department of Buildings (“DOB”) permit applications; and

WHEREAS, the applicant represents that the applications should be closed out within six months of the requested extension of time; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping in accordance with the previously-approved plans; and

WHEREAS, in response, the applicant provided photographs depicting the landscaping; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 19, 1992, so that as amended the resolution reads: “to extend the time to obtain a certificate of occupancy until March 12, 2015; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT a new certificate of occupancy will be obtained by March 12, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. Nos. 401393835 and 401393648)

Adopted by the Board of Standards and Appeals, September 16, 2014.

88-92-BZ

APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of an approved variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.

PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0
Abstain: Chair Perlmutter.....1

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THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term for a variance permitting an eating and drinking establishment (Use Group 6) in an R4-1 zoning district, which expired on June 28, 2014; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located northeast corner of the intersection of Ericson Place and East Tremont Avenue, within an R4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since January 12, 1954, when, under BSA Cal. No. 247-35-BZ, the Board granted an application to permit, in a residence district, the operation of an eating and drinking establishment, contrary to the use regulations of the 1916 Zoning Resolution; under the original grant, the Board limited to the use to a term of 15 years; and

WHEREAS, the 1954 grant was amended and extended at various times over the years; and

WHEREAS, on July 26, 1994, under the subject calendar number, the Board granted an application pursuant to ZR §§ 11-411 and 11-412 to permit a one-story enlargement to the eating and drinking establishment, for a term of ten years, to expire on June 28, 2004; and

WHEREAS, most recently, on October 19, 2004, the Board extended the term of the grant for an additional ten years, to expire on June 28, 2014; and

WHEREAS, therefore, the applicant now seeks an additional extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, at hearing, the Board expressed directed the applicant to: (1) verify whether the partially-enclosed portion of the building is included in floor area; and (2) restripe the parking lot; and

WHEREAS, in response, the applicant: (1) indicated that the partially-enclosed area was not included in floor area; and (2) submitted a photograph depicting the restriped parking lot; and

WHEREAS, the Board has determined that the evidence in the record supports the finding required to be made under ZR § 11-411.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 26, 1994, so that as amended the resolution reads: “to permit the extension of the term of the variance for an additional ten years from June 28, 2014, expiring on June 28, 2024; on condition on condition that all work will substantially conform to drawings, filed with

this application marked ‘Received March 12, 2014’-(3) sheets and ‘August 4, 2014’– (1) sheet; and on further condition:

THAT the term of the variance will expire on June 28, 2024;

THAT the premises will be maintained free of debris and graffiti;

THAT any graffiti located on the premises will be removed within 48 hours;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; and

Adopted by the Board of Standards and Appeals, September 16, 2014.

140-92-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the enlargement of an existing school (UG3) which expired on January 26, 2014. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot(s) 10 and 36, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time of complete construction pursuant to a previously-granted variance permitting a four-story vertical enlargement of an existing two-story building occupied as a school (Use Group 3), which expired on January 26, 2014; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of the proposed enlargement; and

WHEREAS, the subject site is a through lot bounded by Crescent Street to the north and 27th Street to the south,

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between 39th Avenue and 40th Avenue, partially within an M1-2/R5B zoning district and partially within an M1-2/R5D zoning district, within the Special Long Island City Mixed Use District; and

WHEREAS, on May 9, 1995, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M1-3D zoning district, a five-story and cellar horizontal enlargement of an existing four-story and cellar non-conforming school with accessory uses (Use Group 3) which did not provide the required rear yard equivalent and exceeded the maximum height limit; and

WHEREAS, subsequent to the grant, the site was rezoned from M1-3D to partially M1-2/R5B and partially M1-2/R5D, within the Special Long Island City Mixed Use District; and

WHEREAS, on January 26, 2010, the Board reopened the grant and amended it to permit a four-story enlargement, rather than the five-story enlargement originally authorized; and

WHEREAS, pursuant to the conditions of the amended grant, substantial construction was to be completed by January 26, 2014; however, the applicant represents that as of that date, substantial construction had not been completed; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction

WHEREAS, the applicant states that construction pursuant to the grant was delayed due to a lack of funding; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated May 9, 1995, so that as amended the resolution reads: “to grant an extension of time to complete construction for a term of four years from the last expiration, to expire on January 26, 2018; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT substantial construction will be completed by January 26, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 410183821)

Adopted by the Board of Standards and Appeals, September 16, 2014.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the operation of a gasoline service station (Use Group 16), which expired on November 21, 2010, and an extension of time to obtain a certificate of occupancy, which expired on November 21, 2001; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014, July 15, 2014, and August 19, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens, recommends approval of the application; and

WHEREAS, former Queens Borough President Helen Marshall recommends approval of the application, provided that neither beer nor alcohol is sold at the site; and

WHEREAS, the subject site is an irregularly-shaped lot located at the intersection of 243rd Street, South Conduit Avenue, and Francis Lewis Boulevard, within a C1-3 (R3-2) zoning district; and

WHEREAS, the site has 98.74 feet of frontage along 243rd Street, 33.32 feet of frontage along South Conduit Avenue, 79.80 feet of frontage along Francis Lewis Boulevard, 21.54 feet of frontage along 245th Street, and approximately 9,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 1,232 sq. ft. of floor area (0.13 FAR), four gasoline pump island with a total of four dispensers, and four accessory parking spaces; the building includes an accessory convenience store; the site will be operated as a Sunoco station; and

WHEREAS, the Board has exercised jurisdiction over

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the subject site since January 24, 1956 when, under BSA Cal. No. 419-55-BZ, the Board granted a variance to permit the operation of a gasoline service station, lubritorium, non-automatic auto laundry, and auto storage and repair shop, for a term of 15 years; and

WHEREAS, the grant was amended and the term extended at various times; and

WHEREAS, on November 21, 2000, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for the gasoline service station and to permit conversion of the auto repair shop to a convenience store; the term of the grant was limited to ten years, to expire on November 21, 2010 and a condition of the grant was that a certificate of occupancy would be obtained by November 21, 2001; and

WHEREAS, the applicant notes that the term expired more than three years ago and that a certificate of occupancy was not obtained for the use by November 21, 2001; and

WHEREAS, accordingly, the applicant now seeks an extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping in accordance with the previously-approved plans and to remove vacuums, which were not authorized by the prior grant; and

WHEREAS, in response, the applicant provided photographs depicting the landscaping and the removal of the vacuums; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 21, 2000, so that as amended the resolution reads: “to permit the extension of the term of the variance for an additional ten years, from November 21, 2010, expiring on November 21, 2020, and to extend the time to obtain a certificate of occupancy until September 16, 2015; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 29, 2014’- (2) sheets and ‘August 14, 2014’- (1) sheet; and *on further condition*:

THAT the term of the variance will expire on November 21, 2020;

THAT a new certificate of occupancy will be obtained by September 16, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other

applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401042732)

Adopted by the Board of Standards and Appeals, September 16, 2014.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzhock, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction for a previously granted variance (§72-21) to legalize and enlarge a yeshiva (*Yeshiva Ohr Yitzchok*), which expired on March 23, 2014. M1-1 zoning district.

PREMISES AFFECTED – 1214 East 15th Street, between Avenue L and Locust Avenue, Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time of complete construction pursuant to a previously-granted variance permitting the enlargement of an existing school (Use Group 3), which expired on March 23, 2014; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of East 15th Street, between Locust Avenue and Avenue L, within an M1-1 zoning district; and

WHEREAS, on March 23, 2010, under the subject calendar number, the Board granted a variance to permit, on a site within an M1-1 zoning district, the legalization and enlargement of an existing school (yeshiva), contrary to use and bulk regulations; and

WHEREAS, pursuant to the conditions of the grant, substantial construction was to be completed by March 23, 2014; however, the applicant represents that as of that date, substantial construction had not been completed; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant states that construction

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pursuant to the grant was delayed due to a lack of funding; and WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 23, 2010, so that as amended the resolution reads: “to grant an extension of time to complete construction for a term of four years from the last expiration, to expire on March 23, 2018; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT substantial construction will be completed by March 23, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 301345809)

Adopted by the Board of Standards and Appeals, September 16, 2014.

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrachi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED –6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

229-84-BZ

APPLICANT – Troutman Sanders LLP, for High Definition Realty, LLC. owner; Bally Total Fitness of Greater New York, lessee.

SUBJECT – Application June 16, 2014 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (*Bally's Total Fitness*) which expires on November 27, 2014. M1-1 zoning district.

PREMISES AFFECTED –75-28 Queens Boulevard, block bounded by Queens Boulevard Jacobus Street, 51st Avenue

and Kneeland Street, Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

178-03-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, Inc., owner.

SUBJECT – Application June 6, 2014 – Extension of Term of a Special Permit (§73-211) permitting the operation of an automotive service station (UG 16B) which expired on April 28, 2014. C2-2/R3-2 zoning district.

PREMISES AFFECTED –114-02 Van Wyck Expressway, south west corner of Linden Boulevard and Van Wyck Expressway, Block 11661, Lot 7, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (§73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

67-13-A

APPLICANT – NYC Board of Standards And Appeals
OWNER OF PREMISES - OTR 945 Zerega LLC, lessee.

SUBJECT – Application August 13, 2014 – Reopening by court remand for supplemental review of whether a sign at the subject site was a permitted non-conforming advertising sign in light of the Board’s decision in BSA Cal. No. 96-12-A. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

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Recused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated January 14, 2013, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. However, such documentation does not support the establishment of the existing sign prior to the relevant non-conforming use date. As such the sign is rejected. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, and then to decision on September 24, 2013; and

WHEREAS, subsequent to the Board’s decision on September 24, 2013, the Appellant pursued an appeal pursuant to Civil Practice Laws and Rules Article 78 to overturn the Board’s denial (Matter of OTR Media Group v. Board of Standards and Appeals, (Index No. 101422/2013)); and

WHEREAS, pursuant to a stipulation signed by the Appellant and the City, dated August 13, 2014, the matter was remanded to the Board for the limited purpose of considering whether to distinguish the subject appeal from a prior appeal for signs located at 2284 12th Avenue (BSA Cal. Nos. 96-12-A and 97-12-A); and

WHEREAS, accordingly, the Board held a public hearing on September 16, 2014 at which it voted to add three recitals to the conclusion of the September 24, 2013 decision which are identified below for such purpose; and

WHEREAS, the remainder of the resolution remains from the original and the Board re-adopts its denial; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises (the “Premises”) is located on the southwest corner of the intersection of Zerega Avenue and Bruckner Boulevard, within an M1-1- zoning district; and

WHEREAS, the Premises is occupied by a five-story commercial building; atop the building is an advertising sign with a surface area of 672 sq. ft. (the “Sign”); and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign structure (the “Appellant”); and

WHEREAS, the Appellant states that the Sign is 50 feet from and within view of the Cross Bronx Expressway, an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant notes that on March 27, 2008, DOB issued Permit No. 210039224 for the repair of the structural elements of the Sign and on April 21, 2008, DOB issued Permit No. 201143253 for the repair of the Sign itself (collectively the “Permits”); however, on January 31, 2013, DOB revoked the Permits based on its determination that the Sign was not established as a non-conforming advertising sign; and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of the registration (and related revocation of the Permits) of the Sign based on DOB’s determination that the Appellant failed to provide evidence of the establishment of an advertising sign; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the relevant statutory requirements related to sign registration have been in effect since 2005; and

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

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WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and states that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

REGISTRATION PROCESS

WHEREAS, on September 5, 2012, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching copies of cancelled checks, leases, and other agreements as evidence of establishment of the Sign; and

WHEREAS, on October 3, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration at this time (due to a) failure to provide proof of legal establishment of the sign”; and

WHEREAS, by letter dated December 3, 2012, the Appellant submitted a response to DOB, including additional leases and DOB records, which it claimed demonstrated that the Sign was legally established; and

WHEREAS, DOB determined that the December 3, 2012 submission lacked sufficient evidence of the Sign’s establishment, and on January 14, 2013, issued the Final Determination denying registration; likewise, DOB revoked the Permits for the Sign by letter dated January 31, 2013; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto; and

* * *

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways
M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

(1) no permitted #sign# shall exceed 500 square feet of #surface area#; and

(2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

(c) The more restrictive of the following shall apply:

(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or

(2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

ZR § 52-11 *Continuation of Non-Conforming Uses* General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 *Discontinuance* General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor

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improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more. . .

* * *

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

... (d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

* * *

RCNY § 49-16 – Non-conforming Signs

- (a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed and the Permits should be reinstated because the evidence it submitted was sufficient to demonstrate that the Sign was: (1) established as a non-conforming use; and (2) not discontinued for a period of two or more years since establishment; and

WHEREAS, the Appellant contends that the evidence it

has submitted demonstrates that the Sign was established at the Premises prior to November 1, 1979 and therefore may be continued pursuant to ZR § 42-55(c)(2); specifically, the Appellant submitted: a June 12, 1978 lease between Joma Manufacturing Company (of the Premises) and Allied Outdoor Advertising (the “1978 Lease”), an affidavit from Allied Outdoor Advertising President Richard J. Theryoung (the “Theryoung Affidavit”), and an affidavit from advertising and media consultant Bruce Silverman (the “Silverman Affidavit”), and asserts that these items are, considered together, a sufficient basis for a finding that the Sign existed as of November 1, 1979; and

WHEREAS, the Appellant states that the 1978 Lease authorized Allied Outdoor Advertising (“Allied”) to construct and maintain a sign atop the roof of the Premises for seven years, from June 15, 1978 to June 14, 1985; as such, it is evidence that the Sign existed as of November 1, 1979; and

WHEREAS, the Appellant contends that the Theryoung Affidavit, in which the affiant states that he was President of Allied from 1979 to 1997 and that the Sign was constructed in early 1979 and continuously maintained thereafter, further supports the establishment of the Sign; and

WHEREAS, as to the Silverman Affidavit, the Appellant notes that it should be understood as providing background information on the outdoor advertising industry in New York City in the 1970s and supportive of the establishment of the Sign; according to the affiant, recordkeeping practices in the industry at the time were so uneven that the presence of the 1978 Lease makes the existence of the Sign virtually certain; and

WHEREAS, accordingly, the Appellant asserts that it has demonstrated that the Sign existed as of November 1, 1979 and was therefore established as a non-conforming advertising sign; and

WHEREAS, the Appellant contends that the evidence it has submitted demonstrates that the Sign has not been discontinued since its establishment and is not subject to termination under ZR § 52-61; and

WHEREAS, specifically, the Appellant has submitted the following to evidence the Sign’s continuity: (1) a July 15, 1980 Work Completion Notice (the “1980 Notice”) for the construction of a Best Way Food Stores sign; (2) an affidavit from Frank Ferrovechio, who attests that he commuted on the Bruckner Expressway during the 1980s and 1990s and observed the Sign daily; (3) the 1980 Lease, which the Appellant asserts shows continuity from 1978 through 1985; (4) leases with substantial rents in 1988 and 1998; (5) the Theryoung Affidavit; (6) a November 26, 1996 contract for tobacco bulletins for the period 1994 to 1998; (7) miscellaneous lease forms and correspondence between Allied and Universal Outdoor from 1996, 1997, 1998, 2000, 2008 and 2009; (8) 1997 and 1998 rent invoices; (9) a 1998 late notice; (10) a check covering the period between the beginning of July 2004 and the end of August 2004; (11) insurance certificates from 2000 to 2005; (12) a 2007 lease termination; and (13) photographs of the Premises and the Sign from approximately 2005 and from February 2008

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through the present; and

WHEREAS, as to any gaps in the evidence, the Appellant requests that the Board apply the evidentiary principle of the “presumption of continuity” as set forth in *Prince-Richardson on Evidence* § 3-101 (1995) and *Wilkins v. Earle*, 44 NY 172 (1870), to find that the Sign was not discontinued because DOB has not presented evidence of discontinuance; in particular, the Appellant asserts that under that principle, once an object, condition, or tendency is factually established, it may be presumed to continue for as long as is usual with such conditions; further, the Appellant explains that the presumption of continuity “reflects a common sense appraisal of the probative value of circumstantial evidence,” *Foltis v. City of New York*, 287 NY 108, 115 (1941), and should be applied in the instant matter to find that the evidence supports a finding that the Sign continued even if the items of evidence of its existence do not cover the entire period in question; and

WHEREAS, furthermore, the Appellant points to the Silverman Affidavit to bolster its claim that recordkeeping was generally inconsistent in the outdoor advertising industry during most of the time period in question and that the existence of any supporting documentation is persuasive evidence that the Sign existed continuously; and

WHEREAS, as to DOB’s assertion that a tax photograph from the 1980s shows that the Sign and its structure were removed, the Appellant states that such a photograph only shows the Premises at a single point in time and not over a period of time; as such, it is not sufficient evidence to conclude that the Sign was discontinued for more than two years, and the Appellant cites the Board’s decision in BSA Cal. No. 96-12-A (2284 12th Avenue, Manhattan) in support of the principle that a single photo cannot, standing alone, demonstrate that a use was discontinued for more than two years; and

WHEREAS, the Appellant also notes that the 1980 Notice—which DOB asserts is evidence that the Sign was not constructed prior to November 1, 1979—merely supports the continued existence of the Sign and is not dispositive on the actual date that the Sign was established; and

WHEREAS, finally, as to whether the Sign was, as DOB contends, prohibited from being reconstructed after it was removed pursuant to ZR §§ 42-55 and 52-83, the Appellant asserts that DOB has previously accepted as a non-conforming use signs that appear to have been altered, relocated, or reconstructed; and

WHEREAS, specifically, the Appellant states that signs at the following addresses were structurally altered, relocated and/or reconstructed: 5 Eldridge Street, Manhattan; 330 East 126th Street, Manhattan; 2284 12th Avenue, Manhattan; 682-686 East 133rd Street, Bronx; 586 Third Avenue, Brooklyn; 51-06 Vernon Boulevard, Queens; and 54-30 43rd Street, Queens; and

WHEREAS, as such, the Appellant asserts that DOB’s position that removal and reconstruction of the Sign violated ZR §§ 42-55 and 52-83 in this case is belied by its position in prior instances and is, thus, arbitrary; and

WHEREAS, accordingly, the Appellant states that DOB’s Final Determination with respect to the Sign and revocation of the Permits should be reversed; and

DOB’S POSITION

WHEREAS, DOB asserts that: (1) the Appellant has not submitted sufficient evidence to demonstrate the Sign was established at the Premises prior to November 1, 1979; and (2) even if the Board were to find that the Sign was established, the evidence demonstrates that it was removed and reconstructed contrary to ZR §§ 42-55; and 52-83; and

WHEREAS, DOB states that the 1978 Lease and Theryoung Affidavit are, collectively, insufficient evidence of the establishment of the Sign at the Premises prior to November 1, 1979; and

WHEREAS, DOB asserts that under Rule 49(d)(15)(b), an affidavit, on its own and without supporting documentation, is insufficient evidence of establishment; and

WHEREAS, DOB contends that although the Appellant has submitted the 1978 Lease as supporting documentation for the statements of the Theryoung Affidavit, the 1978 Lease by its terms does not demonstrate the establishment of the Sign; and

WHEREAS, in particular, DOB asserts that, according to the language employed in the 1978 Lease (“Lessee will erect the said advertising sign structure and its appurtenances”), Allied was authorized to construct and maintain a sign at the Premises, rather than maintain an existing sign at the Premises; and

WHEREAS, DOB asserts that distinction is critical, because it demonstrates that no sign existed when the 1978 Lease was executed and gives no indication as to when the rights under the lease to construct the Sign were exercised; thus, DOB concludes that the evidence fails to demonstrate the Sign was established prior to November 1, 1979; and

WHEREAS, DOB also contends that a Department of Finance tax photograph from the 1980s shows the Premises without the Sign and its structure; accordingly, DOB concludes that the Sign was removed at some point and reconstructed, in violation of ZR §§ 42-55 and 52-83; and

WHEREAS, specifically, DOB states that pursuant to ZR § 42-55, which regulates advertising signs in manufacturing districts, no advertising sign may be structurally altered, relocated or reconstructed if that sign is located in a district regulated by ZR § 42-55 and is within 200 feet of an arterial highway; and

WHEREAS, DOB notes that ZR § 52-83 allows non-conforming advertising signs in specific zoning districts to be structurally altered, reconstructed, or replaced, provided that such alteration does not create any new non-conformity; however, the section also contains an exception clause, which states, “except as otherwise provided in Section 42-55”; and

WHEREAS, therefore, DOB contends that where a non-conforming advertising sign is in a district covered by both ZR § 52-83 and ZR § 42-55, the exception clause in ZR § 52-83 requires that the more restrictive provisions of ZR §

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42-55 apply; as such, in this case, ZR § 42-55 prohibits the Sign, which is within an M1-1 district and within 50 feet of an arterial highway, from being structurally altered, relocated or reconstructed; and

WHEREAS, accordingly, DOB contends that the Sign cannot have non-conforming status because it was removed and reconstructed in the 1980s contrary to ZR §§ 42-55 and 52-83; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign and properly revoked the Permits; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to November 1, 1979; and

WHEREAS, the Board agrees with DOB that, by its terms, the 1978 Lease is only evidence of what Allied was authorized to do, namely construct and maintain the Sign; and

WHEREAS, thus, the Board also agrees with DOB that nothing in the 1978 Lease provides a basis for the Board to determine when the Sign was actually constructed; the 1978 Lease speaks to, at most, when the Sign *could have been* constructed; and

WHEREAS, further, the Board finds that the only other item of evidence that is somewhat contemporaneous with the 1978 Lease is the 1980 Notice, which is dated July 15, 1980, and which suggests that the Sign construction was completed more than eight months after November 1, 1979, the required date of establishment in ZR § 42-55; and

WHEREAS, as to the Theryoung Affidavit, the Board finds that it lacks specificity and contains conclusory statements, which do not credibly establish that the Sign existed at the Premises prior to November 1, 1979; and

WHEREAS, the Board notes that although Theryoung states that he was “directly involved” in the “specific project” he provides no details regarding the dimensions, orientation, or message of the Sign; and

WHEREAS, as to the Silverman Affidavit, the Board finds that insofar as it seeks to equate the 1978 Lease with the existence of the Sign prior to November 1, 1979, it is not persuasive; indeed, the Board notes that in this case, the record indicates that there was a time period during the 1980s when a lease for the Sign existed, but the Sign—and its structure—were absent from the roof of the Premises; and

WHEREAS, accordingly, the Board agrees with DOB that the Appellant has not submitted sufficient evidence of the Sign’s establishment prior to November 1, 1979; and

WHEREAS, as per the stipulation in the Matter of OTR Media Group v. Board of Standards and Appeals, the Board distinguishes the facts of 2284 12th Avenue (BSA Cal. Nos. 96-12-A and 97-12-A) in which the appellant submitted a 1999 reconsideration signed by the then-Manhattan Borough Commissioner stating that he accepted the sign and that it had been in continuous use as per a 1978 lease from the subject case; and

WHEREAS, as the Board noted in its 12th Avenue decision that the reconsideration did not establish that the then-Borough Commissioner relied solely on a 1978 lease in making his determination to accept the sign in 1999; rather, it is possible that there was additional evidence that he relied upon but did not memorialize in the hand-written, one-sentence sign-off of the 1999 reconsideration; and

WHEREAS, the Board notes that, unlike the appellant in the 12th Avenue case, the Appellant in the subject case did not submit a reconsideration or any similar document, which is viewed to be among the most valuable forms of evidence DOB accepts pursuant to TPPN 14/1988; and

WHEREAS, because the Board finds that the Sign was never established as non-conforming, it is unnecessary to determine whether the Zoning Resolution permitted its removal and reconstruction or whether the presumption of continuity impels the Board to find, based on the Appellant’s evidence, that the Sign was not discontinued; and

WHEREAS, therefore, the Board finds that DOB’s enforcement against the Sign is warranted, and as such, DOB properly rejected the Appellant’s registration of the Sign and properly revoked the Permits.

Therefore it is Resolved, that this appeal, challenging a Final Determination issued on January 14, 2013, is denied.

Adopted by the Board of Standards and Appeals, September 16, 2014.

19-12-A

APPLICANT – Law Offices of Marvin B Mitzner, LLC., for 38-30 28th Street, LLC., owner.

SUBJECT – Application May 9, 2014 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28th Street, west side of 28th Street between 38th and 39th Avenues, Block 386, Lot 27, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

245-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law, requesting that the Board vary several requirements of the MDL. R7B Zoning District

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PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

214-12-BZ

APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.

SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.

PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 2, 2012, acting on DOB Application No. 320219018 (the “Application”), reads in pertinent part:

ZR 52-61: Use Group 16 auto laundry establishment not permitted as of right in an R5 (C2-2) zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5B (C2-2) zoning district, the operation of an automobile laundry (Use Group 16), contrary to ZR §§ 32-10 and 52-61; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in *The City Record*, with continued hearings on April 29, 2014, June 24, 2014, and July 29, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Brooklyn, recommends approval of the application; and

WHEREAS, certain members of the surrounding community testified in support of the application; and

WHEREAS, New York State Assemblyman Steven Cymbrowitz submitted testimony in opposition to the application; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing

concerns regarding: (1) traffic; (2) noise; (3) the spraying of chemicals; (4) the obstruction of sidewalks; (5) the lack of queuing (reservoir) spaces at the site; and (6) substantial evidence that the auto laundry ceased continuous operation for more than two years and therefore may not be resumed, per ZR § 52-61; and

BACKGROUND AND SITE INFORMATION

WHEREAS, the subject site is Block 7224, Lot 70; it is located on the southwest corner of the intersection of Coney Island Avenue and Gerald Court, within an R5B (C2-2) zoning district; and

WHEREAS, the site has approximately 81 feet of frontage along Coney Island Avenue, approximately 100 feet of frontage along Gerald Court, and 7,633 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story auto laundry facility (Use Group 16) with 2,531 sq. ft. of floor area (0.33 FAR); the facility operates under the trade name “Z-Best Car Wash”; and

WHEREAS, this application is brought on behalf of the owners of the site, Shea-Max Harris, LLC and SB Real Estate Holdings, LLC (the “applicant”); and

WHEREAS, according to Certificate of Occupancy (“CO”) No. 122974, an auto laundry was first authorized at the site on March 15, 1949; and

WHEREAS, in subsequent years, the Board exercised jurisdiction over the site, beginning on April 27, 1954, when, under BSA Cal. No. 924-50-BZ, the Board authorized the construction of a gasoline station on the adjacent tax lot (Block 7224, Lot 72) to be operated in conjunction with the existing auto laundry at the site; and

WHEREAS, the 1954 grant was amended and extended at various times, most recently on October 31, 1978, when the Board granted an extension of term for the operation of the gasoline station for a ten-year term, to expire on April 27, 1989; and

WHEREAS, following the 1978 extension of term, which resulted in CO No. 217331 (dated January 22, 1979 and issued for the site and Lot 72), the gasoline station was converted to an as-of-right retail store (Use Group 6) with accessory parking for 12 vehicles; DOB records indicate that this conversion was completed on September 9, 1987, resulting in CO No. 228583 (dated October 1, 1987 and issued only for Lot 72); and

WHEREAS, thus, the Board notes that although the site was under its jurisdiction from April 27, 1954 until April 27, 1989, the auto laundry use was not *authorized* under the terms of BSA Cal. No. 924-50-BZ; rather, the auto laundry was acknowledged as lawfully existing as of 1944 and only the gasoline station use on Lot 72 required the Board’s authorization; as such, upon the expiration of the term of the grant on April 27, 1989, the auto laundry at the site became a non-conforming use subject to ZR § 52-61; and

PROCEDURAL HISTORY

WHEREAS, on September 23, 2010, the Application was filed to renovate the auto laundry; and

WHEREAS, the applicant states that on October 18,

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2010, DOB issued an objection sheet; all objections related to the expiration of CO No. 217331, which as noted above, was applicable to both the site and Lot 72; and

WHEREAS, the applicant states that on November 1, 2010, its architect met with the DOB Brooklyn borough commissioner and the DOB plan examiner regarding the objections; according to the architect's affidavit, the borough commissioner directed the DOB plan examiner to determine "whether or not this was a legal auto laundry and to research whether or not the auto laundry had been in continuous use for the prior two years"; and

WHEREAS, the applicant states that on November 8, 2010, its architect met with the DOB plan examiner, who, according to the architect "removed all the objections concerning the use of the car wash on the grounds that it was a legal use"; and

WHEREAS, on November 29, 2010, DOB issued the work permit; the applicant represents that construction commenced shortly thereafter and was 99 percent complete when, on May 11, 2011, DOB issued a Stop Work Order and a Notice of Intent to Revoke the approvals and permits issued in connection with the Application, citing the Application's non-compliance with ZR § 33-291; and

WHEREAS, on May 18, 2011, DOB issued a second objection, citing the Application's non-compliance with ZR § 52-61, and directing the applicant to "[p]rovide proof of [sic] the non-conforming has not been discontinued for a continuous period of more than two years"; and

WHEREAS, on July 11, 2011, the applicant's architect submitted documentation to the borough commissioner regarding the continuous use of the auto laundry; the documentation included certain water, gas, and telephone bills, sales tax information, workman's compensation insurance information, deeds, and a sworn statement from a person claiming personal knowledge of the continuity of the operations of the auto laundry; and

WHEREAS, by determination dated July 18, 2011, DOB: (1) noted that the last-issued CO for the site reflected the auto laundry use; and (2) accepted the evidence as demonstrating that the auto laundry was not discontinued, per ZR § 52-61; and

WHEREAS, the applicant states that following additional discussions between the job applicant and DOB, on August 15, 2011, DOB removed all objections and rescinded the Notice of Intent to Revoke the approvals and permits, and, on August 16, 2011, rescinded the Stop Work Order; and

WHEREAS, the applicant states that subsequent to the August 16th rescission of the Stop Work Order, additional work was performed at the site; and

WHEREAS, on August 25, 2011, DOB issued another Stop Work Order, citing "reports from the public" that the auto laundry "has not been in operation for seven years"; the applicant represents that no work has been performed since this date; and

WHEREAS, on November 16, 2011, the DOB Padlock Unit began an investigation of the complaint that the auto laundry use had been discontinued per ZR § 52-61 but

nevertheless remained in operation; and

WHEREAS, the Padlock Unit then commenced a proceeding in the Office of Administrative Trials and Hearings to obtain an Order of Closure for the auto laundry pursuant to Article 212 of Title 28 of the Administrative Code; and

WHEREAS, by stipulation dated May 7, 2012, the owner of the site executed a stipulation with DOB (the "Padlock Stipulation"), whereby it agreed to submit a variance application to the Board to permit the continued operation of the auto laundry; and

WHEREAS, by the express terms of the Padlock Stipulation, the auto laundry was permitted to operate and the owner agreed to file a variance application on or before July 1, 2012 and obtain a final decision from the Board regarding the variance application on or before January 1, 2013; in addition, the owner expressly waived its right to "commence administrative . . . proceedings relating to the matters disposed of by [the Padlock Stipulation], including proceedings to . . . challenge the lawfulness, authority, jurisdiction or power of the Commissioner to order the closure of the [site] pursuant to the Padlock Law" including an "appeal to [the Board] pursuant to Sections 659-669 of the New York City Charter"; and

WHEREAS, on July 10, 2012, the applicant filed the instant variance application; and

WHEREAS, on December 11, 2012, DOB issued an Order of Closure, citing the owner's failure to comply with the Padlock Stipulation; and

WHEREAS, the applicant represents that the auto laundry has not operated since the issuance of the Order of Closure; and

WHEREAS, accordingly, the applicant seeks a use variance to permit operation of an auto laundry (Use Group 16) at the site; and

VARIANCE ANALYSIS

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the owner's good faith reliance on DOB's issuance of approval of the Application and issuance of the permits; (2) the history of development at the site; and (3) the site's potential soil contamination; and

WHEREAS, to satisfy ZR § 72-21(a), the applicant primarily relies on the common law doctrine of good faith reliance; and

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the good faith reliance principle when they have made expenditures towards construction that was performed pursuant to a building permit, which is later revoked due to non-compliance that existed at the time of the permit issuance; the principle is raised within the variance context when applicants assert that the reliance creates a unique hardship and seek to substitute it for the customary uniqueness finding under ZR § 72-21(a); and

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WHEREAS, in Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures the property owner made in reliance on the invalid permit should be considered in the variance application because: (1) the property owner acted in good faith, (2) there was no reasonable basis with which to charge the property owner with constructive notice that it was building contrary to zoning, and (3) the municipal officials charged with carrying out the zoning resolution had granted repeated assurances to the property owner; and

WHEREAS, more recently, in Pantelidis v. Board of Standards and Appeals, 10 N.Y.3d 846, 889 N.E.2d 474, 859 N.Y.S.2d 597 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate that the state Supreme Court had conducted a good faith reliance hearing, to determine whether the property owner could claim reliance, rather than remanding the case to the Board to do so in the context of an Article 78 proceeding to overturn the Board's denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, most recently, in Woods v. Srinivasan, 108 AD3d 412 (1st Dept 2013) lv to appeal denied, 22 NY3d 859, 981 NYS2d 370 (2014), the Appellate Division found that, where the issue was whether construction documents and plans complied with the side lot line requirements of ZR § 23-49, DOB, rather than the property owner, was in the best position to avoid the erroneous issuance of the permit; accordingly, the Appellate Division found that the owner had relied in good faith on DOB's permit issuance and remanded to the matter to BSA to consider whether petitioner satisfied the remaining elements required for a variance; and

WHEREAS, accordingly, the Board identifies the findings for good faith reliance under the common law as: (1) that a permit was issued and later revoked based on a permit defect that existed when the permit was first issued; (2) that the permit approval process included an inquiry into the issue that would subsequently be the basis for the revocation of such permit; (3) that the owner could not have known that the permit was defective despite municipal assurances to the contrary; and (4) that construction was performed and expenditures were made subsequent to the issuance of the permit; and

WHEREAS, the applicant asserts that it has established the first element of good faith reliance in that DOB: (1) issued the permit for the Application on November 29, 2010; (2) later discovered the Application's non-compliance with ZR § 52-61 and, on August 25, 2011, ordered work under the permit to stop; and (3) revoked the permit on April 12, 2012 based on the Application's non-compliance with ZR § 52-61, which existed when the permit was first issued; and

WHEREAS, the Board agrees that the permit was issued and later revoked based on defects that existed in the Permit when initially issued; and

WHEREAS, as to whether the permit approval process included an inquiry into the issue that would subsequently be

the basis for the permit's revocation, the applicant contends that on November 1, 2010 (four weeks prior to the initial issuance of the permit), the DOB borough commissioner specifically directed the plan examiner to review the Application for compliance with ZR § 52-61; and

WHEREAS, the Board accepts the applicant's representation that the initial plan examination included some inquiry into whether the auto laundry had been discontinued; however, the Board notes that according to DOB in BSA Cal. No. 296-13-A (280 Bond Street, Brooklyn), where a CO exists permitting a non-conforming use, DOB presumes that the non-conforming use has continued unless it receives a substantiated complaint that the non-conforming use has ceased for more than two years; and

WHEREAS, the Board also observes that the text of ZR § 52-61 employs clear and unambiguous language in describing when a non-conforming use must cease (“[i]f, for a continuous period of two years . . . substantially all the non-conforming uses in any building or other structure is discontinued, such . . . building or other structure shall thereafter only be used for a conforming use”); thus, the statute provides constructive notice that a non-conforming use cannot be resumed if it has been discontinued for a continuous period of two or more years; and

WHEREAS, turning to whether applicant could have known that the permit was defective despite municipal assurances to the contrary, the applicant contends that it could not have known whether the auto laundry use had been discontinued per ZR § 52-61 after the DOB plan examiner determined that it had not been discontinued; and

WHEREAS, the Board disagrees with the applicant; in contrast to the facts in Woods—where the DOB plan examiner approved a permit application based on an interpretation of the Zoning Resolution—in this case, it is unclear on what basis the DOB plan examiner removed the objection relating to ZR § 52-61 prior to the issuance of the permit on November 29, 2010; in any event, the Board finds that whether the auto laundry was discontinued per ZR § 52-61 is predominantly a question of fact; thus, the owner, not DOB, was in the “best position” to know whether as a matter of *fact* the auto laundry had ceased operating for two or more consecutive years; and

WHEREAS, further, the Board finds that when, in the presence of the owner's architect, the borough commissioner instructed the plan examiner to investigate the issue of discontinuance under ZR § 52-61, the owner and its architect had actual notice of the applicability of the two-year limitation on cessation of operations; thus, at that point, it was incumbent on the owner and its licensed professionals not to seek to obtain a permit to maintain the auto laundry use if they knew or should have known that the auto laundry had ceased operating for two or more years; and

WHEREAS, the applicant asserts that the Board does not have the authority in the context of a variance application to “revisit DOB's determination” and is limited to determining whether a permit was issued and relied upon to the owner's detriment; and

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WHEREAS, on the contrary, the Board finds that where an owner seeks to satisfy the (a) finding of ZR § 72-21 by relying almost exclusively on the common law doctrine of good faith reliance, Jayne Estates, Pantelidis, and Woods dictate that the Board must make a finding of good faith; in essence, the Board must determine that the owner could not have known that its permit was issued contrary to the Zoning Resolution; thus, an inquiry into the evidence of the auto laundry's continuous use prior to the issuance of the permit is necessary in order for the Board to determine whether the owner obtained the permit in good faith; and

WHEREAS, the Board notes that the Opposition submitted substantial evidence tending to demonstrate that the auto laundry was not in fact in operation for several years; this evidence includes: (1) water bills for the site covering the time periods between June 20, 2004 and June 23, 2006 and December 27, 2006 and June 27, 2011; (2) 20 sworn statements from nearby property owners; and (3) the hearing testimony of numerous witnesses claiming personal knowledge of the site; and

WHEREAS, at hearing the Board directed the applicant to respond to the Opposition's evidence that the auto laundry did not operate for more than two consecutive years; and

WHEREAS, in response, the applicant submitted the evidence that it submitted to DOB in connection with its July 2011 submission to DOB; as noted above, the evidence included water, gas, and telephone bills, sales tax information, workman's compensation insurance information, deeds, and a sworn statement by the owner; also included a statement from its architect, which explained that the reduction in water usage from 2006 to 2009 was due to the installation of a water recycling system; and

WHEREAS, the Board observes that the water bills in the record indicate a substantial reduction in water usage at the site beginning in late December 2006; for example, during the two-year period between June 2004 and June 2006, water usage averaged approximately 45 gallons of water per day; in contrast, water usage between January 2007 and September 2010, water usage at zero gallons of water per day; and

WHEREAS, the Board finds that whether the site was using water is strongly indicative of whether it was in fact operating the auto laundry and the water bills in the record indicate that no water was being used for a period in excess of three consecutive years; and

WHEREAS, accordingly, the Board rejects the applicant's assertion that the owner could not have known that the use was in fact discontinued and finds that the owner knew or should have known that the Application was filed contrary to ZR § 52-61, particularly given that the meaning of ZR § 52-61 is not disputed; and

WHEREAS, finally, the applicant states that construction was performed and expenditures were made subsequent to the issuance of the permit; specifically, the applicant represents that it completed 99 percent of the construction authorized under the Application and expended

\$471,046.58 before the Stop Work Order was issued in August 2011; and

WHEREAS, the Board agrees with the applicant that it performed substantial construction and made substantial expenditures subsequent to the issuance of the permit and prior to its revocation; however, as noted above, the Board is not persuaded that the applicant has established the other requisite elements of good faith reliance

WHEREAS, accordingly, the Board finds that the applicant must establish a unique physical hardship inherent in the site, per ZR § 72-21(a); and

WHEREAS, in addition to its good faith reliance assertion, the applicant states that the site is uniquely burdened by its history of development, namely its inability to use the existing building at the site for any conforming purpose; and

WHEREAS, the applicant states that the existing building's foundation is connected to the trench drain for the auto laundry in a manner that makes removal of the drain impossible; the applicant also represents that the drain cannot be filled with concrete or other materials because without destabilizing the building; accordingly, the applicant states that both the building and the drain must be demolished, at a cost of approximately \$100,000; and

WHEREAS, the Board acknowledges that it has found the inability to utilize an existing building for conforming uses can contribute to a site's uniqueness, per ZR § 72-21(a); however, the Board also notes that the applicant has not demonstrated that demolition or major alteration of this particular building will require extraordinary costs or practical difficulty; therefore, even assuming that the existing building at the site is a unique physical condition, the applicant has failed to demonstrate that such uniqueness creates a hardship that would justify the requested use variance; and

WHEREAS, the applicant also represents that, based on its preliminary investigation (a Phase I investigation), there may be soil contamination from the gasoline station that operated on the adjacent lot for approximately 30 years or from other sources, resulting in estimated environmental remediation costs of approximately \$442,500; and

WHEREAS, the Board finds that the extent of remediation required at the site cannot be determined without a Phase II investigation and that the estimated costs owing to contamination are, at best, speculative; therefore, the Board finds that the applicant has not demonstrated that its site is uniquely burdened by contaminated soil; and

WHEREAS, consequently, the Board finds that the applicant has not satisfied ZR § 72-21(a); and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return of: (1) a conforming commercial use; and (2) the proposed auto laundry; and

WHEREAS, the applicant contends that only the proposal will result in a reasonable rate of return; and

WHEREAS, the Board acknowledges the applicant's representations regarding the economic feasibility of the site;

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however, because the Board has determined that ZR § 72-21(a) has not been satisfied under the doctrine of good faith reliance, the costs owing to such reliance cannot be considered by the Board in determining whether a conforming use results in a reasonable return on investment, per ZR § 72-21(b); and

WHEREAS, the Board finds that if such costs are discounted, the applicant has not demonstrated that a conforming commercial use fails to result in a reasonable return on investment; and

WHEREAS, the applicant represents that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a diverse array of commercial and auto-oriented uses, including an auto dealership on the block directly north of the site along Coney Island Avenue; the applicant also notes that C8-1 zoning districts—where an auto laundry use would be permitted as-of-right—are mapped within four blocks of the site; and

WHEREAS, the applicant notes that the main entrance to the site is along Coney Island Avenue, which it describes as a major, two-way commercial roadway, 100 feet in width; and

WHEREAS, the applicant asserts that the auto laundry is a well-established use at the site, despite not complying with the subject R5B (C2-2) district regulations, in that it has existed since 1944; and

WHEREAS, the applicant states that the auto laundry proprietor has worked with surrounding businesses, residents, and the community board to devise operational conditions that will minimize the impact of the auto laundry on the neighborhood, including reducing noise, odors, and hours of operation and managing traffic at the site and along Coney Island Avenue; and

WHEREAS, the applicant also submitted an affidavit in support of the application from the owner of the auto dealership, as well as several letters from nearby businesses and residents; and

WHEREAS, as to the Opposition's concerns regarding noise, the applicant states that construction pursuant to the Application improved the noise attenuation and that, if the variance is granted, it will continue to explore further sound attenuation measures; and

WHEREAS, at hearing, the Board expressed concerns regarding the lack of reservoir spaces available on the site, noting that although pursuant to ZR § 32-25, an auto laundry is required to provide "reservoir space for not less than ten automobiles per washing lane" on the zoning lot and that per DOB Memorandum dated January 15, 1975, such reservoir spaces must be provided for autos "awaiting entry into the washing equipment," the proposal reflects no such reservoir spaces on the site; in addition the Board noted that there are residences directly north and west of the site, including a home that is approximately 25 feet from the rear wall of the

auto laundry; and

WHEREAS, in response, the applicant stated that it would control the flow of traffic into the site using flagmen, with queuing of cars along Coney Island Avenue; the applicant also submitted evidence that many auto laundries do not comply with the zoning requirements regarding reservoir spaces as well as an animation of how traffic is to be managed; finally, the applicant asserts that the current configuration and proposed operation of the auto laundry is a significant improvement over the conditions prior to the 2010-2011 renovation; and

WHEREAS, the Board finds that the proposal will have a significant and detrimental impact on traffic in the surrounding neighborhood; the proposed queuing along Coney Island Avenue will result in an unacceptable level of inconvenience to the residents of Gerald Court, create traffic and parking problems for businesses in the vicinity of the site, and significantly delay the movement of vehicular traffic along Coney Island Avenue; as such, the application does not satisfy ZR § 72-21(c); and

WHEREAS, as to whether the hardship asserted by the applicant was created by the owner or a predecessor in title, per ZR § 72-21(d), the applicant states that it was not but was rather due to the owner's good faith reliance on the approval of the Application and issuance of the permit in 2010; and

WHEREAS, the Board disagrees; as set forth above, the 2010 renovation of the building was commenced after the owner of the site had constructive notice (the existence of ZR § 52-61, knowledge of which owners, lessees, tenants, and contract vendees are charged) and actual notice (the November 1, 2010 meeting between the owner's architect, the plan examiner, and the borough commissioner, which included a discussion of ZR § 52-61) of the two-year limitation on discontinuance of non-conforming uses; and

WHEREAS, accordingly, the Board finds that the asserted hardship was self-created; thus, the proposal does not satisfy ZR § 72-21(d); and

WHEREAS, finally, the Board finds that the proposal, which creates significant adverse effects on the surrounding area, is not the minimum variance necessary to afford relief, per ZR § 72-21(e); and

Therefore it is Resolved, the application to permit, pursuant to ZR § 72-21, the proposed auto laundry contrary to ZR §§ 32-10 and 52-61 is hereby *denied*.

Adopted by the Board of Standards and Appeals, September 16, 2014.

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208-13-BZ

CEQR #14-BSA-122K

APPLICANT – Issa Khorasanchi, for Kenneth Segal, owner; Dimitriy Brailovskiy, lessee.

SUBJECT – Application July 8, 2013 – Special Permit (§73-36) to legalize the use of a physical culture establishment (*Fitness Gallery*) located on the second floor of a two story commercial building. C8-1/R4 zoning district.

PREMISES AFFECTED – 1601 Gravesend Neck Road, Gravesend Neck Road, between East 16th and East 17th Street, Block 7377, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 12, 2013, acting on DOB Application No. 320693291, reads, in pertinent part:

Proposed physical culture establishment in C8 district is not a use permitted as of right, per ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C8 zoning district and partially within an R4 zoning district, the legalization of a physical culture establishment (“PCE”) operating in portions of the second story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with a continued hearing on July 29, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site spans the north side of Gravesend Neck Road between East 16th Street and East 17th Street, partially within a C8 zoning district and partially within an R4 zoning district; and

WHEREAS, the site has approximately 202 feet of frontage along East 16th Street, approximately 209 feet of frontage along Gravesend Neck Road, approximately 82 feet of frontage along East 17th Street, and 28,405 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 45,000 sq. ft. of floor area (1.58 FAR); and

WHEREAS, the PCE occupies 2,500 sq. ft. of floor area on the second story and is operated as Fitness Gallery; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R4 portion of the site; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 6:00 a.m. to 11:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board questioned the egress and ADA compliance of the proposal; and

WHEREAS, in response, the applicant stated a note will be added to the plans indicating that all accessibility and egress would be as reviewed and approved by DOB; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA122K dated March 4, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C8 zoning district and partially within an R4 zoning district, the legalization of a PCE operating in portions of the second story of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 26, 2014” Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on August 1, 2023;

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THAT the PCE not will operate within the R4 portion of the site;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility and egress compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2014.

294-13-BZ

CEQR #14-BSA-062M

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated September 3, 2013, acting on DOB Application No. 121688263, reads, in pertinent part:

Proposed conversion of non-residential building is not permitted as defined in ZR 43-17 and it requires BSA approval; and

WHEREAS, this is an application under ZR § 72-21, to

permit, within an M1-5B zoning district, the conversion of the second and third floor of an existing three-story building and the addition of a fourth and partial fifth floor for residential use (Use Group 2), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with continued hearings on June 24, 2014, July 29, 2014, and August 19, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, stated that it did not object to the application on the condition that there not be an eating or drinking establishment at the site; and

WHEREAS, the subject site is located on the west side of Lafayette Street between Spring Street and Broome Street, within an M1-5B zoning district; and

WHEREAS, the site has 25 feet of frontage along Lafayette Street, a lot depth of 75 feet, and 1,875 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story building with 4,875 sq. ft. of floor area and 2.6 FAR; and

WHEREAS, the first floor and cellar are currently occupied by a retail store and the second and third floors are vacant; and

WHEREAS, Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district; and

WHEREAS, although the applicant asserts that the retail use is a lawful pre-existing nonconforming use, the applicant initially sought approval for Use Group 6 use on the first floor as part of the variance; and

WHEREAS, however, during the Board’s review process, the applicant withdrew its request for a waiver to allow Use Group 6 use on the first floor, leaving only the request for residential use on the second, third, and new fourth and partial fifth floors with Use Group 2 residential use; and

WHEREAS, the Board does not take any position on the legality of the first floor and cellar use and, in light of the applicant’s withdrawal of the request to allow Use Group 6 use, the Board does not grant waiver for such use; and

WHEREAS, the applicant states that the proposed enlarged building will be five stories with 6,278 sq. ft. of floor area (3.35 FAR) and the second through fifth floors will be occupied as a single-family residence with a floor area of 4,403 sq. ft.; and

WHEREAS, the applicant proposes for the third and fourth floors to remain at the current depth of the third floor of approximately 46’-8” (leaving a rear yard of approximately 28’-3”); the fifth floor will be set back approximately 21’-5” from the street wall and 40’-0” from the rear lot line; and

WHEREAS, because Use Group 2 is not permitted within the subject M1-5B zoning district, the applicant seeks a

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use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the shallow lot depth and small floor plate; (2) the underbuilt nature of the existing building; and (3) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the lot size, the applicant notes that the lot has a shallow depth of 75 feet and width of 25 feet; and

WHEREAS, the applicant asserts that such dimensions are insufficient to accommodate conforming manufacturing uses and uniquely small within the area; and

WHEREAS, the applicant states that the surrounding lots and the vast majority of lots in the area all have depths of 100 feet or greater; and

WHEREAS, specifically, the applicant analyzed 86 lots in the immediate area within the M1-5B zoning district and found that, of the 86, only 15 had depths of less than 100 feet and of those, only nine had depths of less than 75 feet; and

WHEREAS, additionally, the applicant states that there are only nine lots with lot area of 2,000 sq. ft. or less and they are either vacant (one) or not occupied by manufacturing use (eight); and

WHEREAS, further, the applicant states that the eight buildings on small lots all cover almost the entire lot; and

WHEREAS, the applicant represents that none of the nine shallower lots are used for manufacturing uses; and

WHEREAS, the applicant asserts that the remaining lots in the study area all have significantly larger lot areas and are occupied with buildings with greater FAR; only two of the nine undersized lots also have an FAR below 3.0 and shallow depths; and

WHEREAS, as to the existing bulk, the applicant notes that the building is currently constructed to 2.63 FAR but has a potential for 5.0 FAR; the applicant notes that only 13 buildings in the study area are built to 3.0 FAR or lower and of those 13, only three also have a lot depth of less than 100 feet; and

WHEREAS, the applicant concludes that only 3.4 percent of buildings in the surrounding area within the M1-5B zoning district are underbuilt to the same degree (less than 3.0 FAR) and occupy a shallow lot (less than 100 feet); and

WHEREAS, further, the applicant states that none of the 13 buildings that are underbuilt are occupied with manufacturing use but are commercial or mixed-use buildings; and

WHEREAS, the applicant asserts that the existing building is obsolete for a manufacturing use in the following ways: (1) small floor plates, (2) the absence of elevators, (3) the absence of a loading dock, and (4) constrained vehicle circulation and parking conditions which inhibit access to the building; and

WHEREAS, as to the floor plates, the applicant asserts that they are too small to support a manufacturing use in that the first and second floors have a gross floor area based on the lot line dimensions of 1,875 sq. ft. but the functional space in

the building from interior wall to interior all is 1,628 sq. ft., with an interior wall width and depth of 22 feet by 74 feet; and

WHEREAS, additionally, the applicant asserts that the absence of a freight elevator, and only a single staircase in the building, create difficulty in the vertical transfer of goods for a conforming use; and

WHEREAS, the applicant asserts that to install an elevator in the building, which is already underbuilt, would only decrease the usable floor area and at significant cost; and

WHEREAS, additionally, the applicant notes that there is not a loading dock and the only access to the building is two pedestrian doors at the street entrance making the transfer of wholesale products and oversized shipments impossible; and

WHEREAS, finally, the surrounding traffic and parking conditions constrain access to the site, specifically due to being 150 feet from a five-corner intersection and across the street from Petrosino Square, a designated New York City Park; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant considered the following four as-of-right scenarios: (1) as-of-right manufacturing; (2) as-of-right office; (3) as-of-right office expansion; and (4) as-of-right Join Living Work Quarters for Artists; and (5) the original variance proposal with a floor area of 6,750 sq. ft. and a rear setback of 20'-0" at the third and fourth floors; and

WHEREAS, the applicant notes that among the costs associated with the first three scenarios would be the addition of elevators which would further reduce the constrained floor plates that are already insufficient for conforming use; and

WHEREAS, the applicant concludes that none of the as-of-right alternatives would realize a reasonable rate of return; and

WHEREAS, the applicant also analyzed a lesser variance scenario consisting of the existing building with the second and third floors being converted to residential use and found that a sufficient rate of return could not be realized; and

WHEREAS, the applicant concluded that only the initially proposed five-story mixed-use building with retail on the first floor and a single-family home on the second through fifth floors would realize a reasonable rate of return; and

WHEREAS, however, at the Board's direction, the applicant analyzed the current lesser variance proposal which includes a floor area of 6,278 sq. ft. and a rear setback of 28'-3 1/2" at the third and fourth floors, and concluded that it allows for a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance

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with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant asserts that the surrounding area is characterized by five- to seven-story commercial buildings and lofts occupied by retail uses on the ground floor and residential uses on the upper floors; and

WHEREAS, the applicant submitted an area land use map which reflects that there are only six manufacturing buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant states that adjacent to the site to the north and south are ground floor restaurant uses; the block includes an eleven-story residential building with ground floor retail, built pursuant to a BSA variance, at 204-210 Lafayette Street (see BSA Cal. No. 71-02-BZ); and

WHEREAS, the applicant represents that the building's first floor, which is not a subject of this application, has been used as a commercial use since 1943, as evidenced by a 1943 Certificate of Occupancy and, thus can be established as a non-conforming use; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of one dwelling unit and the continuation of ground floor retail will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant states that the building's proposed street wall of 46 feet, total height of 57 feet, and floor area of 6,278 sq. ft. (3.35 FAR) are compatible with the character of the surrounding area and well within the parameters for conforming use in the subject zoning district, which allows a maximum building height of 85 feet and floor area of 9,375 sq. ft. (5.0 FAR); and

WHEREAS, the Board notes that the applicant originally proposed to extend the rear wall at the third floor and construct the fourth floor directly above it to reduce the existing rear setback above the second floor from 28'-3 1/2" to 20'-0"; and

WHEREAS, at hearing, the Board expressed concern regarding the proposed rear yard depth of 20'-0"; the Board noted that although there are no bulk regulations for residential buildings in manufacturing districts, the Board has historically required a rear yard depth of 30'-0", which is consistent with the requirement in zoning districts where residential use is permitted as-of-right; and

WHEREAS, at the Board's direction, the applicant revised the plans to maintain the existing setback of 28'-3 1/2" at the existing third floor and to provide the same at the new fourth floor; and

WHEREAS, the applicant notes that the full lot coverage of the subject building's first and second floors and setback of 28'-3 1/2" at the third floor are historic conditions and that the adjacent neighbor to the rear of the site provides an open space of 12 feet to its rear lot line; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's history of development, size and narrowness, and the limited economic potential of conforming uses on the lot; and

WHEREAS, as to the minimum variance, the Board notes that the applicant originally requested a variance for first floor Use Group 6 use and Use Group 2 use on the upper floors, but subsequently withdrew its request for a variance for the first floor; and

WHEREAS, additionally, the applicant initially proposed a rear setback at the third and fourth floors of 20'-0", a partial fifth floor with approximately 500 sq. ft. of floor area; and a total floor area of 6,750 sq. ft.; and

WHEREAS, at the Board's direction, the applicant revised the plans to include a rear setback of 28'-3 1/2" at the third and fourth floors and a reduced partial fifth floor, which now has a floor area of approximately 198 sq. ft. and the proposed total floor area was revised to 6,278 sq. ft.; and

WHEREAS, accordingly, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-062M, dated October 1, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6

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NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district, the conversion of the second and third floor of an existing three-story building and the addition of a fourth and partial fifth floor for residential use (Use Group 2), contrary to ZR § 42-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 2, 2014"- six (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum total floor area of 6,278 sq. ft. (3.35 FAR), a residential floor area of 4,403 sq. ft. (2.35 FAR), one dwelling unit, a maximum street wall height of 46'-0", a maximum building height of 57'-0", and a minimum rear setback of 28'-3 1/2" beginning above the second story;

THAT the Board has not approved Use Group 6 use or any other use which does not conform to the underlying use regulations for the first floor and cellar; thus, the use of the first floor and cellar is subject to DOB review and approval and is not within the scope of the variance;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2014.

298-13-BZ CEQR #14-BSA-065Q

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner.
SUBJECT – Application November 1, 2013 – Special Permit (§73-49) to permit 36 rooftop parking spaces, accessory to an existing three story and cellar physical culture establishment (*Spa Castle*). M1-1 zoning district.
PREMISES AFFECTED – 11-11 131st Street, 11th Avenue between 131st and 132nd Street, Block 4011, Lot 24, Borough Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0
Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 23, 2013, acting on DOB Application No. 420848550, reads:

Proposed rooftop parking area is contrary to ZR Section 44-11; and

WHEREAS, this is an application under ZR § 73-49 to permit, on a site located within an M1-1 zoning district, 36 parking spaces on the rooftop of a three-story commercial building occupied by a physical culture establishment ("PCE"), contrary to ZR § 44-10; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in the *City Record*, and then to decision on September 16, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application; and

WHEREAS, the subject site spans the south side of 11th Avenue, between 131st Street and 132nd Street, within an M1-1 zoning district; and

WHEREAS, the site has 170 feet of frontage along 131st Street, 200 feet of frontage along 11th Avenue, 131 feet of frontage along 132nd Street, and 30,124 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story commercial building with 29,787 sq. ft. of floor area (0.99 FAR); the building is occupied by a PCE ("Spa Castle"), the operation of which the Board authorized on July 18, 2006, under BSA Cal. No. 202-05-BZ, for a term of ten years, to expire on July 18, 2016; and

WHEREAS, the site also includes an accessory parking facility for 108 automobiles; 54 parking spaces are within the building and 54 parking spaces are at the second, unroofed story; and

WHEREAS, the applicant notes that 89 parking spaces are required for the PCE use; and

WHEREAS, the applicant proposes to eliminate two existing parking spaces, enclose the unroofed portion of the parking facility, and construct an additional 36 parking spaces atop the enclosure (roof), resulting in a total of 140 parking spaces at the site; and

WHEREAS, because the proposed rooftop parking is not permitted as-of-right in an M1-1 district, the applicant seeks a special permit pursuant to ZR § 73-49; and

WHEREAS, the applicant notes that the proposed rooftop parking is not required but is permitted accessory parking for the PCE; likewise, the proposed parking complies with ZR § 44-12, which limits non-required accessory parking spaces to 150; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to

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impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant states that the site is entirely within an M1-1 zoning district and that there are no buildings immediately adjacent to the proposed rooftop parking; the only adjacent use is the at-grade parking lot directly south of the site; the nearest building is a three-story commercial/industrial building; the nearest residential buildings are located across 11th Avenue and 131st Street; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR § 73-49 have been met; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14BSA065Q, dated October 31, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617.5 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings application under ZR § 73-49 to permit, on a site located within an M1-1 zoning district, 36 parking spaces

on the rooftop of a three-story commercial building occupied by a PCE, contrary to ZR § 44-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 9, 2014"- Seventeen (17) sheets; and *on further condition:*

THAT a maximum of 36 rooftop parking spaces will be permitted;

THAT a maximum of 140 parking spaces will be permitted at the site;

THAT the layout of the parking spaces will be as reviewed and approved by DOB;

THAT all lighting on the roof will be directed down and away from adjacent uses;

THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

THAT the above conditions will appear on the certificate of occupancy;

THAT the conditions set forth in BSA Cal. No. 202-05-BZ remain in effect and will also be noted on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2014.

315-13-BZ

CEQR #14-BSA-076M

APPLICANT – Law office of Stuart Klein, for Flywheel 415 Greenwich, LLC., owner.

SUBJECT – Application December 6, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Flywheel Sports*). C6-2A (TMU) zoning district.

PREMISES AFFECTED – 415-427 Greenwich Street, 12-18 Hubert Street & Laight Street, Block 215, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0
Abstain: Chair Perlmutter.....1

THE RESOLUTION –

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WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 20, 2013, acting on DOB Application No. 121789671, reads, in pertinent part:

Proposed change of use to a physical culture establishment is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-2A zoning district, within the Special Tribeca Mixed Use District, within the Tribeca North Historic District, the legalization of a physical culture establishment (“PCE”) operating in portions of the first story of a ten-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in the *City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, certain residents of the subject building, through counsel, submitted testimony in opposition to the application, citing concerns regarding the noise generated by the PCE and the adequacy facility’s sound attenuation; and

WHEREAS, the subject site spans the east side of Greenwich Street between Hubert Street and Laight Street, within a C6-2A zoning district, within the Special Tribeca Mixed Use District, within the Tribeca North Historic District; and

WHEREAS, the site has approximately 125 feet of frontage along Hubert Street, approximately 176 feet of frontage along Greenwich Street, approximately 126 feet of frontage along Laight Street, and 22,329 sq. ft. of lot area; and

WHEREAS, the site is occupied by a ten-story mixed residential and commercial building with approximately 172,444 sq. ft. of floor area (7.8 FAR); and

WHEREAS, the PCE occupies 3,154 sq. ft. of floor area on the first story and is operated as Flywheel Sports, Inc.; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 9:00 p.m. and Saturday and Sunday, from 6:30 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated July 8, 2013; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or

development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to respond to the opposition’s concerns regarding noise; and

WHEREAS, in response, the applicant stated that additional sound attenuation measures were installed subsequent to the opposition notifying the applicant of its concerns; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14SA076M dated May 5, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-2A zoning district, within the Special Tribeca Mixed Use District, within the Tribeca North Historic District, the legalization of a PCE operating in portions of the first story of a ten-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 9, 2013” Two (2) sheets and “Received May 5, 2014” Two (2) sheets and *on*

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further condition:

THAT the term of the PCE grant will expire on December 1, 2023;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board-approved plans;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2014.

40-14-BZ

CEQR #14-BSA-122K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bill Stathakos, owner; Blink Fulton Street, Ink., lessee.

SUBJECT – Application March 4, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 1413/21 Fulton Street, north side of Fulton Street, 246 Ft. West of Tompkins Avenue, Block 1854, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 24, 2014, acting on DOB Application No. 320904517, reads, in pertinent part:

Proposed physical culture establishment in a C2-4 zoning district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within partially within a C2-4 (R7D) zoning district and partially within an R6B zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first, second, and third stories of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in the *City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the north side of Fulton Street, between MacDonough Street and Tompkins Avenue, partially within a C2-4 zoning district and partially within an R6B zoning district; and

WHEREAS, the site has approximately 108 feet of frontage along Fulton Street and 10,251 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story commercial building; and

WHEREAS, the proposed PCE will occupy 846 sq. ft. of floor area on the first story and 7,137 sq. ft. of floor area on the second and third stories, for a total PCE floor area of 15,120.; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R6B portion of the site; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

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WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA122K dated March 4, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, , to permit, on a site within partially within a C2-4 (R7D) zoning district and partially within an R6B zoning district, the operation of a PCE in portions of the first, second, and third stories of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 4, 2014” Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on September 16, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2014.

47-14-BZ

CEQR #14-BSA-129Q

APPLICANT – John M. Marmora, Esq., for RKR Properties, Inc., owner; McDonald's USA, LLC., lessee.

SUBJECT – Application March 26, 2014 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald's*) with an accessory drive-through facility. C1-2/R5D zoning district.

PREMISES AFFECTED – 122-21 Merrick Boulevard, northwest corner of Merrick Boulevard and Sunbury Road, Block 12480, Lot(s) 32, 39, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 3, 2014, acting on DOB Application No. 420946267, reads:

Proposed eating and drinking establishment with accessory drive-through in C1 district is not permitted as-of-right and is contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-3 (R5D) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on July 15, 2014, with a continued hearing on July 29, 2014, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site located on the northwest corner of the intersection of Merrick Boulevard and Sunbury Road, within a C1-3 (R5D) zoning district; and

WHEREAS, the site has approximately 160 feet of frontage along Merrick Boulevard, approximately 61 feet of frontage along Sunbury Road, 9,688 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated by KFC) with 2,116 sq. ft. of floor area (0.21 FAR), an accessory drive-through, and seven accessory parking spaces; and

WHEREAS, the applicant now seeks to demolish the existing building, reconfigure the drive-through, reduce the number of accessory parking spaces from seven to five, and change the operator from KFC to McDonald’s; and

WHEREAS, the Board notes that a special permit is required for the proposed accessory drive-through facility in the C1-3 (R5D) zoning district, pursuant to ZR § 73-243; and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character

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of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for 11 vehicles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in the applicant notes that the proposed reconfiguration is a substantial improvement upon the existing KFC restaurant and drive-through, which has uncontrolled ingress and egress onto Merrick Boulevard; in contrast, the proposal reflects and elimination of the curb cut on Merrick Boulevard and the creation of additional reservoir spaces and simplification of the traffic flow; and

WHEREAS, in addition, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-3 (R5D) zoning district; as noted above, the proposed five parking spaces with the minimum requirement of ZR § 36-21; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant states that Merrick Boulevard is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores, supermarkets, banks, offices and retail stores; and

WHEREAS, the applicant states that such uses and the surrounding residential neighborhoods they support are substantially oriented toward motor vehicle use; and

WHEREAS, the Board notes that the applicant has submitted photographs of the site and the surrounding streets, which supports this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that most of the surrounding properties (the sites to the south, east, and west) are occupied by exclusively commercial uses; and

WHEREAS, the applicant notes that there are residences on sites directly north of the site; however, the dwellings are separated from the proposed McDonald's by a rear yard and, in most cases, an accessory parking garage; in addition, the applicant states that there will be adequate buffering between the drive-through and adjacent uses in the form of a fence, trees, shrubs, and planting beds; and

WHEREAS, accordingly, the applicant represents that the drive-through facility satisfies each of the requirements for a special permit under ZR § 73-243; and

WHEREAS, at hearing, the Board requested clarification that the proposed drive-through is a permitted accessory use for the principal use (Use Group 6 eating and drinking establishment), consistent with the ZR § 12-10 definition of "accessory"; the Board also directed the applicant to provide additional landscaping and explore a reduction in the accessory signage; and

WHEREAS, in response, the applicant submitted an amended statement, which demonstrates that the proposed drive-through is: (1) conducted on the same zoning lot as the proposed principal use (Use Group 6 eating and drinking establishment); (2) clearly incidental to and customarily found in connection with such principal use; and (3) operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of such principal use; and

WHEREAS, as such, the applicant contends and the Board agrees that the proposed drive-through complies with the ZR § 12-10 definition of "accessory"; and

WHEREAS, in addition, the applicant submitted an amended site plan, which reflects additional plantings, including a fence with ivy, and a reduction in signage for the northern façade of the building; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-129Q dated March 26, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and

MINUTES

Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within a C1-3 (R5D) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR §32-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 3, 2014"- (7) sheets; and *on further condition*:

THAT the term of this grant will expire on September 16, 2024;

THAT the premises will be maintained free of debris and graffiti;

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage will conform to C1 zoning district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, September 16, 2014.

52-14-BZ

APPLICANT – Lewis Garfinkel, for Asher Fried, owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1339 East 28th Street, east side of East 28th Street, 320' south of Avenue M, Block 7664, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings ("DOB"), dated March 28, 2014, acting on DOB Application No. 320594763, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the permitted 50 percent;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the required 150 percent;
3. Plans are contrary to ZR 23-461 in that the proposed minimum side yard is less than the required 5'-0";
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 28th Street and 4,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,220 sq. ft. of floor area (0.31 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to convert the building to a single-family home and increase its floor area from 1,220 sq. ft. (0.31 FAR) to 3,917 sq. ft. (0.98 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 85 percent to 57 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard width of 3'-7" and decrease the site's existing side yard width of 12'-5" to 9'-11"; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each; and

MINUTES

WHEREAS, the applicant also seeks to decrease its rear yard depth from 54'-7" to 20'-0"; a rear yard with a minimum depth of 30'-0" is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot 0.98 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this assertion, the applicant identified thirteen homes within 400 feet of the subject site with FARs of 0.97 or greater; the applicant notes that eight of the thirteen homes were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) the proposed distances between the home and the buildings directly east of the site; and (2) the proposed landscaping for the site; and

WHEREAS, in response, the applicant submitted amended plans that indicate the proposed distance to the buildings directly east of the site and the proposed landscaping; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 25, 2014"– (11) sheets and "September 3, 2014"–(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,917 sq. ft. (0.98 FAR), a minimum open space of 57 percent, side yards with minimum widths of 3'-7" and 9'-11, and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 16, 2014.

81-12-BZ

APPLICANT – Eric Palatnik, P.C., for McDonald's Real Estate Co., owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-243) to permit the demolition and reconstruction of an eating and drinking establishment (Use Group 6) with an accessory drive-through and on-site parking. C1-3/R3-2/R3A zoning district.

PREMISES AFFECTED –98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 23, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

176-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 2 residential in an existing 6-story building with a new penthouse addition, contrary to Section 42-10 of the zoning resolution. M1-5B zoning district.

PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, Borough of Manhattan.

COMMUNITY BOARD # 2M

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for deferred decision.

MINUTES

5-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

25-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Yeshiva of Flatbush, LLC, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing four story Yeshiva. R2 & R5 zoning district.

PREMISES AFFECTED – 1601-1623 Avenue J aka 985-995 East 16th Street & 990-1026 East 17th Street, Block 6709, Lot(s) 32, 34, 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

42-14-BZ

APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.

SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.

PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

50-14-BZ

APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.

SUBJECT – Application April 1, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.

PREMISES AFFECTED – 825 Manhattan Avenue aka 181 Calyer Street, north side of Calyer Street, 25' west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – To be reopened.

91-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

93-14-BZ

APPLICANT – Eric Palatnik, P.C., for 455 West 37 LLC., owner; MJM Boxing LLC., lessee.

SUBJECT – Application September 16, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Title Boxing Club*). R8A/C2-5 zoning district.

PREMISES AFFECTED – 455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

96-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.

SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district.

PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

BULLETIN

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226-14-BZ

147-02 76th Road, Southeast corner of 76th Road and 147th Street., Block 6686, Lot(s) 1, Borough of **Queens, Community Board: 8**. Variance (§72-21 to permit the proposed three (3) story use group 4 Synagogue, school and Rabbi's office. R4 zoning district. R4 district.

227-14-BZ

606 Neptune Avenue, Neptune Avenue between West 6th Street and Shell Road, Block 720, Lot(s) 25, Borough of **Brooklyn, Community Board: 13**. Special Permit (§73-243) to permit the legalization and continued of an existing use group 6 eating and drinking establishment with an accessory drive-through in an R6/Cl-2 zoning district. R6/Cl-2 district.

228-14-BZ

149 Hasting Street, Hastings Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot(s) 466, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge an existing two story dwelling in a residential zoning district contrary to th floor, open space and lot coverage requirements, located in an R3-1 zoning district. R3-1 district.

229-14-BZ

55-05 Myrtle Avenue, corner of Madison Street and St. Nicholas Avenue, Block 3450, Lot(s) 01, Borough of **Queens, Community Board: 5**. Special Permit (§73-36) to seek the legalization of an existing physical culture establishment"(Lucille Robets Women's Gym)"located within an C4-3A zoning district. C4-3A district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 21, 2014, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 21, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

724-56-BZ

APPLICANT – Eric Palatnik, P.C., for Praela Enterprises Ink., owner.

SUBJECT – Application June 12, 2014 – Amendment of a previously approved variance which permitted automotive repair (UG 16B). Application is to amend the length of an extension of term that was granted the Board from five years to ten years which expired November 20, 2012. R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, west side of Francis Lewis Boulevard, between 42nd Road and Northern Boulevard, Block 5373, Lot 26, Borough of Queens.

COMMUNITY BOARD #11Q

362-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corp., owner.

SUBJECT – Application June 10, 2014 – Extension of Term for the continued operation of an accessory commercial open parking lot and accessory commercial storage shed which expired on May 11, 2014. R8 (*Special Clinton District*).

PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street between 9th and 10th Avenue, Block 1054, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 133 East 58th Street LLC, owner; Manhattan Sports Performance LLC, lessee.

SUBJECT – Application June 13, 2004 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation a physical culture establishment (*Velocity Performance Sports*) which expires September 1, 2014. C5-2 zoning district.

PREMISES AFFECTED – 133 East 58th Street, between Lexington And Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

11-14-A thru 14-14-A

APPLICANT – Sheldon Lobel, P.C., for Trimountain LLC, owner.

SUBJECT – Application January 22, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district.

PREMISES AFFECTED – 47-04, 47-06, 47-08 198th Street, south side of 47th Avenue between 197th Street and 198th Street, Block 5617, Lot 34, 35, 36, Borough of Queens.

COMMUNITY BOARD #11Q

162-14-A

APPLICANT – Rampulla Associates Architects, for Lawrence O O’Friel, owner.

SUBJECT – Application July 9, 2014 – Proposed construction of a single family detached home that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R1-2 zoning district.

PREMISES AFFECTED – 100 Giegerich Avenue, west side Giegerich Avenue 431.10’ to Minerva Avenue, Block 7796, Lot 11(tentative), Borough of Staten Island.

COMMUNITY BOARD #3SI

163-14-A thru 165-14-A

APPLICANT – Ponte Equities, for Ponte Equities, Ink, owner.

SUBJECT – Application July 10, 2014 – Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A zoning district.

PREMISES AFFECTED – 502, 504, 506 Canal Street, Greenwich Street and Canal Street, Block 595, Lot 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

235-14-A

APPLICANT – Joseph Jabour, for Kevin & Roxie Voorhees, owners.

SUBJECT – Application September 30, 2014 – GCL 36: NYC-HPD Build It Back in a Private Community known as Seagate which is a private unmapped street for a proposed single family home to replace the dwelling destroyed by Hurricane Sandy, located within an R3-1 zoning district.

PREMISES AFFECTED – 4020 Atlantic Avenue, 200’ to Beach 40th Street from east property line, Block 7042, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #13BK

CALENDAR

ZONING CALENDAR

28-14-BZ

APPLICANT – Eric Palatnik, P.C. for McDonald Corporation, owner; Brooklyn Avenue U Enterprises Corporation, lessee.

SUBJECT – Application February 10, 2014 – Special Permit (§73-243) to permit the continued use and (Use Group 6) eating and drinking establishment with an accessory drive-through. C1-2/R4 zoning district.

PREMISES AFFECTED – 3540 Nostrand Avenue, westside of Nostrand Avenue, between Avenue V and Avenue W. Block 7386, Lot(s) 114 and 117. Borough of Brooklyn.

COMMUNITY BOARD #15BK

45-14-BZ

APPLICANT – Eric Palatnik, P.C., for Athina Orthodoxou, owner.

SUBJECT – Application March 18, 2014 – Special Permit (§73-622) to enlarge an existing semi-detached two story dwelling and to vary the floor area ratio requirements, and to convert the one family home into a two family home. R4-1 zoning district.

PREMISES AFFECTED – 337 99th Street, between 3rd and 4th Avenues, Block 6130, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #10BK

115-14-BZ

APPLICANT – Eric Palatnik, P.C., for Suzanne Bronfman, owner; T. Kang Taekwondo USA, Ink., lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to allow for a physical culture establishment in an existing building located in C6-2A zoning district.

PREMISES AFFECTED – 85 Worth Street aka 83 Worth Street, between Church Street and Broadway, Block 173, Lot 2, Borough of Manhattan.

COMMUNITY BOARD #1M

122-14-BZ

APPLICANT – Lewis E Garfinkel, for Ariel Boiangiu, owner.

SUBJECT – Application October 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home contrary to floor area and open space ZR 23-141; side yards ZR 23-461 and less than the required rear yard ZR 23-47. R2 zoning district.

PREMISES AFFECTED – 1318 East 28th Street, west side of 28th Street 140 feet of Avenue M, Block 7663, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 23, 2014
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez

SPECIAL ORDER CALENDAR

997-84-BZ

APPLICANT – Sheldon Lobel, P.C., for 222 Union Associates, owner.

SUBJECT – Application January 23, 2014 – Amendment (§11-413) to a previous variance for a public parking garage. The amendment would convert the building to mixed use, with retail (UG 6) on first floor and cellar, and residential (UG 2) on the second through sixth floors. R6A & C1-1/R6A zoning district.

PREMISES AFFECTED – 798-804 Union Street, 6th Avenue and 7th Avenue, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to allow structural alterations and a change in use from a public parking garage with accessory auto rental (Use Group 8) to a mixed residential and commercial building (Use Groups 2 and 6); and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with continued hearings on July 22, 2014 and August 19, 2014, and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, declined to issue a formal recommendation; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing primary concerns about the loss of necessary parking spaces, and the effect that the originally-proposed balconies and terrace at the rear lot line would have on the properties at the rear; and

WHEREAS, the subject site is located on the south side of Union Street, between Sixth Avenue and Seventh Avenue, partially within an R6A (C1-3) zoning district and partially within an R6A zoning district; and

WHEREAS, the site has approximately 93 feet of frontage along Union Street and 8,865 sq. ft. of lot area; and

WHEREAS, the site is occupied by a six-story public parking garage (Use Group 8) with approximately 52,897 sq. ft. of floor area (5.97 FAR) and 100 percent lot coverage; and

WHEREAS, the applicant proposes to convert the building to a mixed-use building with commercial uses (Use Group 6 retail) on the first floor and cellar, and residential use (Use Group 2) on the second through sixth floors; and

WHEREAS, as part of the conversion, the applicant proposes structural alterations for the reconstruction and relocation of the rear wall of the building above the first floor so as to provide a rear yard that complies with Multiple Dwelling Law requirements for legally-required windows for the conforming residential use on the upper floors; and

WHEREAS, the site has been subject to the Board's jurisdiction since July 9, 1929, when, under BSA Cal. No. 271-29-BZ, the Board permitted the construction of a parking garage and gasoline station contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, subsequent to the 1929 grant, the use of the building was changed to a factory, and in 1950 and 1959, under BSA Cal. Nos. 504-46-A and 491-59-A, the Board granted appeals waiving compliance with Labor Law § 270, associated with exits for factory use; and

WHEREAS, on September 10, 1985, when the site was zoned within R6 and C1-3 (R6) zoning districts, the Board authorized a change of use back to a garage with an auto rental office, pursuant to ZR § 11-413, under BSA Cal. No. 997-84-BZ; the Board also granted a waiver of the Administrative Code's sprinkler requirements under BSA Cal. No. 998-84-A; and

WHEREAS, the term of the grant was extended twice and has an expiration of September 10, 2015; and

WHEREAS, the applicant now seeks approval for a change of use to retail (Use Group 6) on the first floor and cellar and for a change in use of the second through sixth floors to residential use (Use Group 2), pursuant to ZR §§ 11-413, and 52-34 and for reconstruction and relocation of the rear wall above the first floor pursuant to ZR § 11-412 for the conforming residential use in order to provide light and air in accordance with the Multiple Dwelling Law, and for the discontinuance of the existing approval; and

WHEREAS, the applicant notes the following plan for the building: (1) the footprint of the cellar and first floor will not be changed and approximately 50 percent of the cellar is proposed to be occupied by commercial use and the remainder will be for building services and accessory to the residential use; (2) approximately 80 percent of the first floor will be occupied by retail use and the remainder will be for the residential lobby, elevator, storage, and egress; and (3) the building's rear wall will be demolished and the depth of the second through sixth stories will be reduced by five feet; and

WHEREAS, the applicant proposes a total of 28 dwelling units with a total residential floor area of 44,461 sq. ft.; and

WHEREAS, the applicant notes that although the

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residential FAR and building height exceed that allowed by the underlying zoning district regulations, all of the residential use is within the envelope of the historic garage building except for the new roof construction, which it contends complies with ZR § 23-62 as a permitted obstruction; and

WHEREAS, the applicant asserts that with the addition of the five feet of open space above the first floor at the rear of the building, there will be a distance of 48 feet between the building's new rear wall and the rear wall of the adjacent buildings with frontage on President Street; and

WHEREAS, the applicant asserts that, with the inclusion of the rear setback, the proposal complies with MDL § 277; and

WHEREAS, the applicant asserts that the new construction on the roof is required by the Building Code and permitted by ZR § 23-62 and that the rooftop recreation area meets the requirements of ZR § 15-10; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit enlargement of a building subject to a use variance issued prior to December 15, 1961, provided that such enlargement is limited to the zoning lot that was granted such variance; in addition, pursuant to ZR § 11-413, the Board may permit a change in use from a non-conforming use to a conforming use; and pursuant to ZR § 52-34, the Board may permit a change in use from a non-conforming use to certain other uses which do not comply with underlying use regulations, including Use Group 6, provided that the change of use does not impair the character or future use or development of the surrounding area; and

WHEREAS, the applicant states that the proposal significantly reduces the amount of floor area devoted to a non-conforming use; and

WHEREAS, the application asserts that the proposed commercial use is compatible with the essential character of the conforming and non-conforming commercial uses in the surrounding area and the mixed-use building is similarly a common building composition in the area; and

WHEREAS, as noted, the applicant initially proposed a terrace on the roof of the first floor and balconies along the rear wall; and

WHEREAS, in response to the neighbors' and the Board's concerns, the applicant eliminated all of the balconies and access to the terrace from the second floor units; and

WHEREAS, in response to the concerns about traffic and the loss of parking, the applicant submitted a traffic study which concluded that the loss of parking would not have detrimental impact to the community; the applicant also asserts that there are not any parking requirements for the conversion of the existing building to mixed Use Group 6 and Use Group 2 use; and

WHEREAS, at hearing, the Board asked the applicant whether it would be possible to retain any number of parking spaces; and

WHEREAS, in response, the applicant stated that it reviewed alternate designs including the retention of a ramp or elevator for vehicle access to the cellar and concluded that the amount of space required for such conditions would

undermine the feasibility of the project; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 11-412 and 11-413.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 10, 1985, to permit the noted changes in use and building alterations; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received August 29, 2014'-(17) sheets; and *on further condition*:

THAT the total floor area is limited to 51,709 sq. ft. and the commercial floor area is limited to 7,248 sq. ft.; all other bulk parameters area as reflected on the Board-approved plans;

THAT all construction will be completed and a certificate of occupancy obtained within four years of the date of this grant;

THAT DOB will review and approve interior layouts; Multiple Dwelling Law compliance; and the zoning compliance of the rooftop structures;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2014.

193-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Vornado Realty Trust., owner; Soulcycle 384 Lafayette Street, LLC., lessee.

SUBJECT – Application March 11, 2014 – Amendment to permit the enlargement of a previously approved special permit (§73-36) for a physical culture establishment (*SoulCycle*). M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street aka 692 Broadway and 2-20 East 4th Street, southwest corner of Lafayette Street and East 4th Street, Block 531m Kit 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Commissioner Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previously-granted special permit for a

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physical culture establishment (“PCE”) to permit the enlargement of the PCE; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in *The City Record*, and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on a site with frontage on Broadway, East 4th Street, and Lafayette Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site is occupied by a mixed-use 12-story commercial/manufacturing/residential building, known as the Silk Building; and

WHEREAS, the PCE currently occupies 3,294 sq. ft. of floor area on the first floor and 1,873 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the Board has exercised jurisdiction over the subject PCE since October 23, 2012 when, under the subject calendar number, the Board granted a special permit in the subject building for a term of ten years, to expire on October 23, 2022; and

WHEREAS, the site is also the subject of a prior PCE special permit approval for a Blink Fitness, pursuant to BSA Cal. No. 33-10-BZ, which is not the subject of this application; and

WHEREAS, the applicant now seeks an amendment to permit the enlargement of the PCE into other portions of the first floor and cellar of the building; specifically, the proposal would increase the floor area of the PCE from 3,294 sq. ft. to 4,553 sq. ft. on the first floor and from 1,873 sq. ft. of floor space to 3,331 sq. ft. of floor space in the cellar; and

WHEREAS, the extension will include the utilization of a new entry on Lafayette Street; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (LPC), dated March 4, 2014, approving the proposed signage and other modifications under its jurisdiction; and

WHEREAS, based upon its review of the record, the Board finds the requested amendments to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution to permit the noted modifications; *on condition* that any and all work substantially conforms to drawings as they apply to the objections above noted, filed with this application marked ‘Received March 11, 2014’– four (4) sheets; and *on further condition*:

THAT all conditions from prior the resolution not specifically waived by the Board remain in effect;

THAT all modifications to signage and the façade will be in accordance with the Landmarks Preservation

Commission’s Certificate of No Effect, dated March 4, 2014;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 23, 2014.

698-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application May 21, 2014 – Amendment of a previously approved variance to permit the conversion of the convenience store to a relocate and re-size curb cuts and to legalize the existing remediation equipment and location of the tanks and permit additional trees on the site. C2-2 zoning district.

PREMISES AFFECTED – 2773 Nostrand Avenue, northeast corner of Kings Highway and Nostrand Avenue, Block 7684, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

902-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 116-118 West 29th Street, south side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49, 50, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

1096-79-BZ & 1097-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing

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manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 120 & 114 West 29th Street, south side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49 (aka 52), Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

148-03-BZ

APPLICANT – Goldman Harris LLC, for The Flower House Condominium, owners; Northwest Real Estate LLC, lessee.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 111/113 West 28th Street, north side of West 28th Street between Sixth and Seventh Avenue, Block 804, Lot(s) 1101-1105, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

162-95-BZ & 163-95-BZ

APPLICANT – Warshaw Burstein, LLP, for Mario Bonavita, owner; Pelham Bay Fitness Group, LLC, owner.

SUBJECT – Application April 25, 2014 – Extension of Term of a previously approved Special Permit (§73-36) on the first and mezzanine floor of the existing building to allow for its continued operation. C2-4 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, southeast side of Westchester Avenue between Mahan Avenue and Hobart Avenue, Block 4196, Lot(s) 9, 11, 13, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application July 22, 2014 – Extension of Time to Complete Construction of a previously granted Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home which expired on January 27, 2013; Waiver of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, between Oriental Boulevard and Hampton Street, Block 8749, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

159-08-BZ

APPLICANT – Jay A. Segal for Greenberg Traurig, LLP, for DJL Family Limited Partnership, owners.

SUBJECT – Application July 18, 2014 – Extension of time to complete construction and Waiver of Rules of Procedure, for a project approved on February 10, 2009, to construct a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

145-14-A

APPLICANT – Yuk Lam, for XU M Hui, owner.
SUBJECT – Application June 23, 2014 – Proposed four-story building not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law.
PREMISES AFFECTED –136-16 Carlton Place, between Linden Place and Leavitt Street, Block 4960, Lot 62, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 10, 2014, acting on DOB Application No.420942396, reads in pertinent part:

The proposed building not fronting the mapped street, contrary to General City Law Section 36; and

WHEREAS, this is an application to allow the construction of a four-story, three-family building not fronting a mapped street contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in *The City Record*, with a continued hearing on September 9, 2014 and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Carlton Place, between Linden Place and Leavitt Street, within an R6 (C2-2) zoning district; and

WHEREAS, the applicant states that the site has 25 feet of frontage along Carlton Place and 1,582 sq. ft. of lot area; and

WHEREAS, the applicant states that Carlton Place is an unmapped access road; and

WHEREAS, the applicant proposes to demolish the existing, vacant two-story frame dwelling and construct a four-story, three-family building; and

WHEREAS, the applicant also proposes to install a new curb cut along Carlton Place to provide access to one off-street parking space; and

WHEREAS, by letter dated July 7, 2014, Fire Department states that it has reviewed the project and offers no objections, provided the building is fully sprinklered;

WHEREAS, the applicant represents that the building will be fully-sprinklered; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant

approval of the application subject certain conditions.

Therefore it is Resolved, that the decision of the DOB, dated June 10, 2014, acting on DOB Application No. 420942396, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 12, 2014”- one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT building will be fully-sprinklered;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals September 23, 2014.

300-08-A

APPLICANT – Law office of Marvin B. Mitzner LLC, for Steven Baharestani, owner.

SUBJECT – Application April 24, 2014 – Extension of time to complete construction and obtain a Certificate of Occupancy for the construction of a hotel under common law vested rights. M1-2 /R5-B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street between 39th and 40th Avenues, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

57-09-A thru 112-09-A

129-09-A thru 152-09-A

APPLICANT – Eric Palatnik, P.C., for Maguire Woods Estates, owners.

SUBJECT – Application May 14, 2014 – Application to permit an extension of time to complete construction and obtain a certificate of occupancy under the previously granted Common Law vested rights for a residential development approved under the prior zoning district regulations. R3-2(SSRD) zoning district.

PREMISES AFFECTED – Santa Monica Lane, El Camino Loop, Moreno Court, Block 6979, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for decision, hearing closed.

23-14-A

APPLICANT – Eric Palatnik, P.C., for Cheong Wing Chung & Guo Ying Zhang, owners.

SUBJECT – Application February 5, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district. R2-A zoning district.

PREMISES AFFECTED – 198-35 51st Avenue, 51st Avenue between Weeks Lane and 199th Street, Block 7374, Lot 13, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for decision, hearing closed.

95-14-A

APPLICANT – Bernard Marson, for BBD & D Ink., owner.
SUBJECT – Application May 5, 2014 – MDL 171 & 4.35 to allow for a partial one-story vertical enlargement (*Penthouse*) of the existing 3 story and basement building located on the site. Pursuant to the 310 MDL. R8 zoning district.

PREMISES AFFECTED – 237 East 72nd Street, north Side of East 72nd Street 192.6' West of 2nd Avenue, Block 1427, Lot 116, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

265-13-BZ

CEQR #14-BSA-036Q

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*), contrary to floor area (§§23-141, 24-161), maximum dwelling unit (§§23-22, 24-20), maximum building height (§23-631), and minimum parking (§25-25e) regulations. R3A zoning district.

PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of

intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 14, 2014, acting on DOB Application No. 420813285, reads in pertinent part:

1. Proposed mixed use multiple dwelling building is contrary to ZR 22-12;
2. Proposed residential floor area ratio exceeds the maximum permitted pursuant to ZR 23-141 and 24-161;
3. Proposed number of dwelling units exceeds maximum permitted pursuant to ZR 23-22 and 24-20;
4. Proposed building exceeds maximum permitted building height pursuant to ZR 23-631;
5. Proposed number of parking spaces is below minimum required pursuant to ZR 25-25(e); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a R3A zoning district, the construction of a five-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for use, floor area ratio (“FAR”), density, height, and parking, contrary to ZR §§ 22-12, 23-141, 23-22, 23-631, 24-161, 24-20, and 25-25; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in the *City Record*, with a continued hearing on August 19, 2014, and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by former Chair Srinivasan, Vice-Chair Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, Councilperson Leroy Comrie, Councilperson I. Daneek Miller, former Queens Borough President Helen Marshall, Queens Borough President Melinda Katz, and certain members of the surrounding community submitted testimony in support of the application; and

WHEREAS, Assemblyman William Scarborough, Congressman Gregory Meeks, the St. Albans Civic Improvement Association, the Addison Park Civic Association, and certain members of the surrounding community submitted testimony in opposition to the application (the “Opposition”), citing the following concerns: (1) the incompatibility of the proposed height and number of dwelling units with the surrounding neighborhood; (2) the negative effect of the proposal on traffic, parking, and critical infrastructure, including police, schools, and sewers; (3) the

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absence of an Environmental Impact Statement (“EIS”); (4) the inconsistency of the proposal and the recent R3A downzoning; and (5) the lack of a nexus between the programmatic needs of the church and the proposed waivers; and

WHEREAS, the application is brought on behalf of the Presbyterian Church of St. Albans (the “Church”), which is a non-profit religious organization, in partnership with Trinity Development Associated (“Trinity”), which is a for-profit developer that specializes in affordable housing projects; where referred to collectively, the Church and Trinity constitute the applicant; and

WHEREAS, the subject site an irregularly-shaped lot in the mid-block portion of the block bounded by Farmers Boulevard, 118th Avenue, 189th Street, and 119th Avenue, within an R3A zoning district; and

WHEREAS, the site comprises Tax Lots 58 and 63, has 224.03 feet of frontage along Farmers Boulevard, 129.54 feet of frontage along 189th Street, and 44,642 sq. ft. of lot area; and

WHEREAS, the site is vacant; the applicant represents that Lots 58 and 63 were historically developed separately with residential buildings; and

WHEREAS, the applicant notes that the Church has owned Lot 58 for 16 years and purchased Lot 63 jointly with Trinity in 2011; subsequently, on July 26, 2014, Trinity assigned its interest in Lot 63 to the Church; accordingly, the applicant represents the Church has title to the entire site; and

WHEREAS, the applicant proposes to construct a five-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 64,718 sq. ft. of floor area (1.45 FAR) (63,897 sq. ft. of residential floor area (1.43 FAR) and 821 sq. ft. of community facility floor area (0.02 FAR)), 10,417 sq. ft. of community facility floor space in the cellar, 67 dwelling units, 17 parking spaces, a wall height of 35’-0”, and a building height of 55’-0”; and

WHEREAS, the applicant states that the proposed community facility will facilitate the Church’s youth- and senior-oriented programming, including life skills courses, educational training, arts instruction, adult care, and recreation facilities; and

WHEREAS, the applicant also states that the proposal is an affordable housing project, with anticipated financing from the Department of Housing Preservation and Development (“HPD”), New York State Division of Housing and Community Renewal (“DHCR”), and Community Preservation Corporation; and

WHEREAS, in order to construct the building as proposed, the applicant seeks the following waivers: (1) use (a multiple dwelling is not permitted within the subject R3A zoning district, per ZR § 22-12); (2) maximum FAR (a maximum FAR of 1.0 is permitted, per ZR §§ 23-141 and 24-161); (3) density (a maximum of 31 dwelling units is permitted, per ZR § 23-22); (4) height (a maximum wall height of 21’-0” is permitted with a maximum building height of 35’-0” is permitted, per ZR § 23-631); and (5) parking (a minimum of 34 spaces is required, per ZR § 25-25); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the site’s irregular shape is a unique physical condition, which creates an unnecessary hardship in developing the site in conformance and compliance with applicable regulations; and

WHEREAS, the applicant states that the site is a six-sided, irregular through lot with an arcing frontage along 189th Street, a diagonal frontage along Farmers Boulevard, a lot width varying from 224 feet to 129 feet, and a lot depth varying from 131 feet to 279 feet; and

WHEREAS, the applicant also states that the easternmost portion of the site forms a triangle along the arcing street line formed by 189th Street and that the triangle narrows from approximately 80 feet in width at its widest point to zero feet; and

WHEREAS, the applicant represents that there are no sites within 400 feet of the subject site with even a remotely similar shape; and

WHEREAS, the applicant states that despite the site’s substantial lot area (44,642 sq. ft.), the shape of the site combined with the use and bulk requirements of the subject R3A zoning district results in a development with only 22 dwelling units and 30 percent lot coverage, which represents ten fewer dwelling units and 25 percent less lot coverage than is permitted as-of-right; and

WHEREAS, to further demonstrate how the site’s shape constrains its development, the applicant submitted an analysis, which reflects that if the site had a standard shape, it would accommodate 16 homes (32 dwelling units); and

WHEREAS, accordingly, the applicant states that relief is necessary to make efficient use of the site for housing; and

WHEREAS, in addition, the applicant states that in order to be competitive for certain financial programs associated with the affordable housing, it must build a minimum number of dwelling units; in support of this statement, the applicant provided letters detailing its eligibility for HPD and DHCR funding; and

WHEREAS, finally, the applicant states that the Church’s programmatic needs are furthered by the proposal; and

WHEREAS, specifically, as noted above, the Church has a long-standing presence in the community and requires additional space for educational, religious, and recreational programming; likewise, the Church represents that its congregation is drawn largely from the surrounding neighborhood and that housing affordability is a substantial and persistent concern for its congregants and other members of the surrounding community; and

WHEREAS, the applicant also states, as noted above, that the majority of the proposed cellar level (10,417 sq. ft.) will be used as a community facility; the applicant contends that, absent the requested parking waiver, parking spaces, rather than community facility program space will be placed in the cellar, resulting in a significant reduction in the Church’s community-oriented programming at the site; and

WHEREAS, as noted above, the Board acknowledges that the Church, as a religious institution, is entitled to

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significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, as to the Opposition's concerns regarding the nexus between the Church's programmatic needs and the requested relief, the Board notes that the applicant does not rely exclusively on programmatic needs to justify the requested waivers; rather, programmatic needs satisfaction is a mere component of the (a) finding under ZR § 72-21 and the primary component is the irregular shape of the site coupled with the economics of constructing affordable housing; and

WHEREAS, based upon the above, the Board finds that the shape of the site and the programmatic needs of the Church in developing community-oriented space and affordable housing units create an unnecessary hardship and a practical difficulty in developing the site in conformance and compliance with the applicable zoning regulations; and

WHEREAS, the applicant states that as a non-profit institution, it is exempt from establishing that there no reasonable possibility that the development of the site in strict compliance with the zoning requirements will bring a reasonable return, per ZR § 72-21(b); nonetheless, to demonstrate the need for the number of dwelling units proposed, the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right development consisting of 11 two-family homes; (2) an as-of-right development on a standard lot with the same lot area; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal provides relief for the unique conditions of the site and allows the Church to construct affordable housing units as well as space for its religious programming; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that an affordable housing development in strict compliance with applicable zoning requirements is feasible; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood includes one- and two-family homes and large community facilities; and

WHEREAS, as to adjacent uses, the applicant states that the site is surrounded on all sides by detached, two- or three-story, one- or two-family homes; and

WHEREAS, as to the use variance, the Board notes that

although residences are permitted at the site, multiple dwellings are not permitted; thus, the use waiver is mitigated by the fact that residential use is contemplated at the site; further, as noted above, a multiple dwelling is necessary to achieve the number of dwelling units required for a government-funded affordable housing project; and

WHEREAS, the applicant notes that although the proposed building rises to a height of five stories, only the central portion of the building is five stories and the portions of the building immediately adjacent to the nearby homes are three or four stories in height; and

WHEREAS, the applicant also asserts that the proposed five-story building is contextual with the profile of community facility buildings in the vicinity, including the St. Albans Church and School located at 172-17 Linden Boulevard (building height of 30 feet and 22,440 sq. ft. of floor area), the VA Medical Center and Home located at 180-20 Linden Boulevard (building height of 60 feet and 731,427 sq. ft. of floor area), PS 3 located at 187-40 Foch Boulevard (building height of 42 feet and 36,750 sq. ft. of floor area), the St. Catherine's Church and School located at 185-15 Baisley Boulevard (building height of 39 feet and 12,200 sq. ft. of floor area), PS 15 located at 121-15 Lucas Street (building height of 50 feet and 49,410 sq. ft. of floor area), Humanities and Arts High School located at 207-01 116th Avenue (building height of 56 feet and 252,655 sq. ft. of floor area), and PS 16 located at 201-15 115th Avenue (building height of 42 feet and 97,200 sq. ft. of floor area); and

WHEREAS, further, the applicant states that in order to minimize the effects of the proposed height on the adjacent residences, the design includes a perimeter wall height of 35 feet and a front yard depth consistent with adjacent properties; in addition, at the Board's request, the proposal was modified to enhance the landscaping and plantings along the perimeter of the site; and

WHEREAS, the applicant also notes that an R5D zoning district is mapped just north of the site at 118th Avenue, and that the proposed building would be complying in that district with respect to use, FAR, and density; and

WHEREAS, the applicant contends that, based on the anticipated car ownership of the residents of the building—which is expected to be lower than the average household in the area—and the availability of off-street parking in the vicinity of the site, the proposed parking waiver is appropriate; and

WHEREAS, at hearing, and in response to the concerns of the Opposition, the Board directed the applicant to submit a more comprehensive parking demand analysis; and

WHEREAS, in response, the applicant provided the requested parking demand analysis of nine nearby residences of similar size, which reflects that the proposal will not have a significant negative impact on parking in the surrounding area; and

WHEREAS, as to the Opposition's concerns regarding the lack of an EIS, the Board observes that an EIS was not required due to the scope of the proposal, as set forth below; and

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WHEREAS, as to the Opposition's concerns regarding the inconsistency of the proposal with the recent downzoning of the site to R3A, the Board notes that ZR § 72-21 exists to provide relief for uniquely burdened sites where the general use and/or bulk regulations make development infeasible; thus, while the Board considers the timing of a rezoning in determining whether a proposal satisfies the (c) finding ZR § 72-21, a recent rezoning *per se* does not make a site ineligible for relief that would otherwise be appropriate; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site and the applicant's objective to provide affordable housing and community facility space for the Church's congregants; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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 an Unlisted action pursuant to 6 NYCRR, Part 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-036Q, dated February 4, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within a R3A zoning district, the construction of a five-story mixed

residential and community facility affordable housing building that does not comply with the zoning requirements for use, FAR, density, height, and parking, contrary to ZR §§ 22-12, 23-141, 23-22, 23-631, 24-161, 24-20, and 25-25; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 5, 2014"—twenty (20) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of five stories, a maximum floor area of 64,718 sq. ft. of floor area (1.45 FAR), a maximum residential floor area of 63,897 sq. ft. (1.43 FAR), a maximum of 67 dwelling units, a minimum of 17 parking spaces, a maximum wall height of 35'-0", and a maximum building height of 55'-0", as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2014.

21-14-BZ CEQR #14-BSA-108Q

APPLICANT – Eric Palatnik, P.C., for FSJ Realty Group LLL., owner; Crunch Richmond Hill, LLC., lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Crunch Fitness*). C2-4/R6A zoning district. PREMISES AFFECTED – 115-02 Jamaica Avenue, southeast corner of Jamaica Avenue and 115th Street, Block 9305, Lot(s) 2 and 11, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Commissioner Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 22, 2014, acting on DOB Application No. 420803554, reads, in pertinent part:

Proposed physical culture establishment in a R6A (C2-4) zoning district is contrary to Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36

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and 73-03, to permit, on a site within a C2-4 (R6A) zoning district, the operation of a physical culture establishment (“PCE”) on the second and third stories of a new three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in the *City Record*, and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends support of this application; and

WHEREAS, the subject site is irregularly-shaped lot located at southeast corner of the intersection of Jamaica Avenue and 115th Street, with a portion of the lot fronting on 116th Street; the site comprises Lots 1, 2, 3, 4, and 11, and is within a C2-4 (R6A) zoning district; and

WHEREAS, the site has approximately 93 feet of frontage along Jamaica Avenue, approximately 105 feet of frontage along 115th Street, approximately 86 feet of frontage along 116th Street, and approximately 18,946 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story commercial building with approximately 8,557 sq. ft. of floor area; and

WHEREAS, the applicant states that it proposes to construct on Lot 2 a new three-story building with 29,135 sq. ft. (1.54 FAR); and

WHEREAS, the proposed PCE will occupy 8,944 sq. ft. of floor area on the second story and 8,944 sq. ft. of floor area on the third story, for a total PCE floor area of 17,888 sq. ft.; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, at hearing, the Board requested additional information regarding the uses immediately adjacent to the site; and

WHEREAS, in response, the applicant submitted amended statement, which provides further information regarding surrounding uses, including immediately adjacent uses, which are all commercial in nature; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to

the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA108Q, dated February 3, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-4 (R6A) zoning district, the operation of a PCE on the second and third stories of a new three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 14, 2014” Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on September 23, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2014.

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123-14-BZ

CEQR #14-BSA-167M

APPLICANT – Fried Frank Harris Shriver & Jacobson LLP, for 855 MRU LLC., owner.

SUBJECT – Application June 3, 2014 – Special Permit (§73-36) to allow the operation of physical culture establishment in portion of the cellar and first floor of the existing building. C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 855 Avenue of the Americas, between 30th Street and 31st Street, Block 806, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez. 4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 21, 2014, acting on DOB Application No. 121331102, reads, in pertinent part:

Proposed physical culture establishment is not permitted as of right in an M1-6 or C6-4X district, per ZR 32-10 and 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-4X zoning district and partially within an M1-6 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a 41-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 42-10; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in the *City Record*, and then to decision on September 23, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and\

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site spans the western side of Avenue of the Americas between West 30th Street and West 31st Street, partially within a C6-4X zoning district and partially within an M1-6 zoning district; and

WHEREAS, the site has approximately 204 feet of frontage along West 31st Street, approximately 198 feet of frontage along Avenue of the Americas, approximately 189 feet of frontage along West 30th Street, and approximately 39,760 sq. ft. of lot area; and

WHEREAS, under construction at the site is a 41-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 15,931 sq. ft. of floor space in the cellar and 3,711 sq. ft. of floor area on

the first story, for a total PCE size of 19,702 sq. ft.; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, 5:30 a.m. to 11:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14-BSA-167M, dated June 3, 2014 ; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C6-4X zoning district and partially within an M1-6 zoning district, the operation of a PCE in portions of the cellar and first story of a 41-story mixed residential and commercial building, contrary to ZR §§ 32-10 and 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 3, 2014 – four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on September 23, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or

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maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 23, 2014.

78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

153-11-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoros Parais, owner.

SUBJECT – Application September 21, 2011 – Reinstatement (§§11-411 & 11-412) to permit the continued operation of an automotive repair use (UG 16B); amendment to enlarge the existing one story building; Waiver of the Board's Rules. C1-3 zoning district.

PREMISES AFFECTED – 27-11 30th Avenue, between 27th Street and 39th Street. Block 575, Lot 23. Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Remand Back to Board of Standards and Appeals; seeks a judgment vacating the resolution issued on January 15, 2013 and filed on January 17, 2013. R6-/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

286-12-BZ

APPLICANT – Eric Palatnik, P.C., for People of Destiny Ministries International, Inc., owners.

SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story UG 4A House of Worship (*People of Destiny Church*), contrary to coverage ratio (§24-11). R6 zoning district.

PREMISES AFFECTED – 1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue, Block 1399, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for continued hearing.

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.

SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility.

Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

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254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

283-13-BZ

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for decision, hearing closed.

323-13-BZ

APPLICANT – Eric Palatnik, P.C., for Galt Group Holdings, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to permit the proposed alteration, which will enlarge the footprint and include a vertical enlargement at the rear portion of the existing four story, plus cellar and basement contrary to lot coverage §23-145. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 127 East 71st Street, East 71st Street between Park and Lexington Avenues, Block 1406, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

48-14-BZ

APPLICANT – Eric Palatnik, P.C., for Vlad Benjamin, owner.

SUBJECT – Application March 26, 2014 – Special Permit (§73-622) for the enlargement of an existing two story single family home, contrary to floor area, lot coverage and open space (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 174 Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot 196, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

53-14-BZ

APPLICANT – Evolution Muay Thai LLC, for 12 West 27 Land, L.P., owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Evolution Muay Thai*). M1-6 zoning district.

PREMISES AFFECTED – 12 West 27th Street, 2nd floor, between Broadway and 6th Avenue, Block 828, Lot 56, Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for decision, hearing closed.

97-14-BZ

APPLICANT – Warshaw Burstein, LLP, for 22-26 East 14 Condominium, owner; 22 East 14th St. Fitness Group, LLC, lessee.

SUBJECT – Application May 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on portions of the ground and cellar levels of the existing building. C6-1 zoning district.

PREMISES AFFECTED – 22-26 East 14th Street, between 5th Avenue and University Place, Block 571, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

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105-14-BZ

APPLICANT – Lewis E. Garfinkel, for Caren May, owner.
SUBJECT – Application May 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1224 East 27th Street, west side of East 27th Street, 175' south from Avenue L, Block 7644, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for decision, hearing closed.

130-14-BZ

APPLICANT – Francis R. Angelino, Esq., 605 fifth Property Owner, LLC, owner; Chiva-Som Spa, lessee.

SUBJECT – Application June 11, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Chiva-Som Spa*) will be on the entire fifth floor of a six-story commercial building, located within a C5-3 zoning district.

PREMISES AFFECTED – 605 Fifth Avenue, east Side Fifth Avenue between East 48th & 49th Streets, Block 1284, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

132-14-BZ

APPLICANT – Warshaw Burstein, LLP, for 441 Rockaway, LLC, owner; 441 Rockaway Ave. Fitness Group, LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building, located within a C4-3 zoning district.

PREMISES AFFECTED – 441 Rockaway Avenue, frontage on Rockaway Avenue and Thatford Avenue, south of Pitkin Avenue, Block 3522, Lot(s) 9, 26, Borough of Brooklyn.

COMMUNITY BOARD #16BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

144-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Park 121 Realty LLC., owner; Leake & Watts Services Inc. Children's Learning Center, lessee.

SUBJECT – Application June 20, 2014 – Special Permit (§73-19) to allow for a Use Group 3 special education preschool on the second floor of an existing building. M1-4 district.

PREMISES AFFECTED – 1751 Park Avenue, east side of Park Avenue between East 122nd Street and East 121 Street, Block 1770, Lot(s) 72, 4, 3, 2, 1, 101, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for continued hearing.

206-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 910 Lanark, Queens. Block 15500, Lot 602.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

207-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 41 West 12th Road, Queens. Block 15316, Lot 64.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

208-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 119 East 7th Road, Queens. Block 15454, Lot 21.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

209-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 592 Beach 43rd Street, Queens. Block 15961, Lot 102.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

210-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4A zoning district.

PREMISES AFFECTED – 69-52 Thursby Avenue, Queens. Block 16050, Lot 63.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

211-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 3-41 Beach 87th Street, Queens. Block 16119, Lot 101.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

212-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5D zoning district.

PREMISES AFFECTED – 209A Beach 100th Street, Queens. Block 16156, Lot 94.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

CORRECTION

This resolution adopted on September 16, 2014, under Calendar No. 88-92-BZ and printed in Volume 99, Bulletin No. 38, is hereby corrected to read as follows:

88-92-BZ

APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of an approved variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.

PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term for a variance permitting an eating and drinking establishment (Use Group 6) in an R4-1 zoning district, which expired on June 28, 2014; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located northeast corner of the intersection of Ericson Place and East Tremont Avenue, within an R4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since January 12, 1954, when, under BSA Cal. No. 247-35-BZ, the Board granted an application to permit, in a residence district, the operation of an eating and drinking establishment, contrary to the use regulations of the 1916 Zoning Resolution; under the original grant, the Board limited to the use to a term of 15 years; and

WHEREAS, the 1954 grant was amended and extended at various times over the years; and

WHEREAS, on July 26, 1994, under the subject calendar number, the Board granted an application pursuant to ZR §§ 11-411 and 11-412 to permit a one-story enlargement to the eating and drinking establishment, for a term of ten years, to expire on June 28, 2004; and

WHEREAS, most recently, on October 19, 2004, the Board extended the term of the grant for an additional ten

years, to expire on June 28, 2014; and

WHEREAS, therefore, the applicant now seeks an additional extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, at hearing, the Board expressed directed the applicant to: (1) verify whether the partially-enclosed portion of the building is included in floor area; and (2) restripe the parking lot; and

WHEREAS, in response, the applicant: (1) indicated that the partially-enclosed area was not included in floor area; and (2) submitted a photograph depicting the restriped parking lot; and

WHEREAS, the Board has determined that the evidence in the record supports the finding required to be made under ZR § 11-411.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 26, 1994, so that as amended the resolution reads: “to permit the extension of the term of the variance for an additional ten years from June 28, 2014, expiring on June 28, 2024; on condition on condition that all work will substantially conform to drawings, filed with this application marked ‘Received August 4, 2014’– (1) sheet and ‘March 12, 2014’-(4) sheets; and on further condition:

THAT the term of the variance will expire on June 28, 2024;

THAT the premises will be maintained free of debris and graffiti;

THAT any graffiti located on the premises will be removed within 48 hours;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; and

Adopted by the Board of Standards and Appeals, September 16, 2014.

The resolution has been amended to correct the plans date which read: ‘Received March 12, 2014’-(3) sheets and ‘August 4, 2014’– (1) sheet ...now reads: ‘Received August 4, 2014’– (1) sheet and ‘March 12, 2014’-(4) sheets. Corrected in Bulletin No. 39, Vol. 99, dated October 1, 2014.

MINUTES

CORRECTION

This resolution adopted on October 29, 2013, under Calendar No. 163-04-BZ and printed in Volume 98, Bulletin No. 44, is hereby corrected to read as follows:

163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application July 26, 2013 – Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (*Crunch Fitness*) which expired on July 17, 2013. C2-4/R7A zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and S. Felix Street, Block 2096, Lot 66, 99, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain certificates of occupancy, which expired on July 17, 2013; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, and then to decision on October 29, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R7A) zoning district; and

WHEREAS, the site is occupied by a two-story commercial building at 677-691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 693-699 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor of both buildings and the cellar of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2015; and

WHEREAS, on April 24, 2007, the Board granted an amendment to permit the enlargement of the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building, and to extend the hours of operation to 24 hours, daily; and

WHEREAS, pursuant to the April 24, 2007 grant, substantial construction was to be completed by April 24,

2011, in accordance with ZR § 73-70; and

WHEREAS, the applicant states that subsequent to the April 24, 2007 grant, the permit applications related to the PCE underwent a series of audits and the applicant experienced disputes with its contractors, which delayed the completion of construction and the issuance of the certificates of occupancy; and

WHEREAS, accordingly, on July 17, 2012, the applicant sought and the Board granted an one-year extension of time to obtain certificates of occupancy, to expire on July 17, 2013; and

WHEREAS, the applicant now requests an additional extension of time to obtain certificates of occupancy; and

WHEREAS, the applicant states that, although work is substantially completed, certificates of occupancy have not been obtained (despite the resolution of the audits) because the buildings have open Department of Buildings and Environmental Control Board violations; and

WHEREAS, the applicant represents that the requested extension of time will enable to the applicant to resolve the open violations related to the PCE and obtain certificates of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated July 12, 2005, so that as amended the resolution shall read: “to grant an extension of time to obtain certificates of occupancy for one year from the date of this resolution, to expire on October 29, 2014; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the above conditions will appear on the Certificates of Occupancy;

THAT certificates of occupancy must be obtained by October 29, 2014;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application Nos. 301441296 and 302207403)

Adopted by the Board of Standards and Appeals, October 29, 2013.

MINUTES

The resolution has been amended to change the word “mezzanine” to “cellar”, located in the 6th WHEREAS. Corrected in Bulletin No. 39, Vol. 99, dated October 1, 2014.

BULLETIN

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October 15, 2014

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Tuesday, October 7, 2014**

Morning Calendar823

Affecting Calendar Numbers:

822-59-BZ	1774 Victory Boulevard, Staten Island
964-87-BZ	786 Burke Avenue, aka 780-798 Burke Avenue, Bronx
203-92-BZ	70-20 Austin Street, Queens
302-01-BZ	2519-2525 Creston Avenue, Bronx
152-07-BZ	8701 4 th Avenue, Brooklyn
159-07-BZ	2402 86 th Street, Brooklyn
19-12-A	38-30 28 th Street, Queens
106-14-A	84 William Street, Manhattan
142-14-A	92 Fulton Street, Manhattan
300-12-BZ	36 West 93 rd Street, aka 33 West 92 nd Street, Manhattan
50-14-BZ	825 Manhattan Avenue, aka 181 Calyer Street, Brooklyn
130-14-BZ	605 Fifth Avenue, Manhattan
144-14-BZ	1751 Park Avenue, Manhattan
206-14-BZ	910 Lanark, Queens
207-14-BZ	41 West 12 th Road, Queens
209-14-BZ	592 Beach 43 rd Street, Queens
210-14-BZ	69-52 Thursby Avenue, Queens
211-14-BZ	3-41 Beach 87 th Street, Queens
212-14-BZ	209A Beach 100 th Street, Queens
350-12-BZ	5 32 nd Street, Brooklyn
174-13-BZ	2449 Morris Avenue, aka 58-66 East Fordham Road, Bronx
185-13-BZ	97 Franklin Avenue, Brooklyn
193-13-BZ	4770 White Plains Road, Bronx
271-13-BZ	129 Norfolk Street, Brooklyn
38-14-BZ	116 Oxford Street, Brooklyn
59-14-BZ	114-122 Jackson Street, Brooklyn
104-14-BZ	282 South 5 th Street, aka 287 Broadway, Brooklyn
117-14-BZ	101 West 91 st Street, Manhattan
141-14-BZ	2465 Broadway, Manhattan
208-14-BZ	119 East 7 th Road, Queens

DOCKETS

New Case Filed Up to October 7, 2014

230-14-A

20 Pelton Avenue, Northwest corner of intersection of Pelton Avenue and Pelton Place, Block 149, Lot(s) 20, Borough of **Staten Island, Community Board: 1**. Proposed construction of a on-family residence located partially within the bed of a mapped street pursuant to Section 35 of the General City Law. R3X district.

231-14-BZ

124 West 23rd Street, Located on the south side of West 23rd Street, between Avenue of the Americas and 7th Avenue, Block 00798, Lot(s) 7507, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow for a physical culture establishment (fitness center) within a portion of an existing commercial building. C6-3X zoning district. C6-3X district.

232-14-BZ

946 Pennsylvania Avenue, Premises is located on the west side of Pennsylvania Avenue between Wortman Avenue and Cozine Avenue, Block 04389, Lot(s) 0001, Borough of **Brooklyn, Community Board: 5**. Special Permit (§73-36) to allow for a physical culture establishment (fitness center) within a portion of an existing commercial building. M1-1 Zoning District M1-1 district.

233-14-BZ

4545 Center Boulevard, Easterly side of Center Boulevard between North Basin Road and 46th Avenue, Block 00021, Lot(s) 0020, Borough of **Queens, Community Board: 2**. Special Permit (§73-36) to allow for a physical culture establishment within a portion of an existing commercial building. M3-1 Zoning District M3-1 district.

234-14-A

738 East 6th Street, South side of East 6th Street between Avenue C and Avenue D, Block 00375, Lot(s) 0028, Borough of **Manhattan, Community Board: 3**. Appeal of the NYC Department of Buildings' determination to not revoke a Certificate of Occupancy issued in 1989 and reinstate the Certificate of Occupancy issued in 1985. R8B district.

235-14-A

4020 Atlantic Avenue, 200 feet to Beach 40th Street from East property line, Block 7042, Lot(s) 0011, Borough of **Brooklyn, Community Board: 13**. Proposed reconstruction of a single family home to replace the dwelling destroyed by Hurricane Sandy, not fronting a legally mapped street contrary to General City Law 36. R3-1 zoning district. R3-1 district.

236-14-BZ

106 East 57th Street, South side of East 57th Street, 90 feet from Park Avenue, Block 01311, Lot(s) 0065, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-241) to legalize the operation of an eating and drinking establishment (UG 6C) with entertainment, but not dancing, with a capacity of 200 persons or fewer. C5-3 (MID) zoning district. C5-3 (MID) district.

237-14-BZ

162-01 Jamaica Avenue, corner of Jamaica Avenue and 162nd Street, Block 09761, Lot(s) 0001, Borough of **Queens, Community Board: 12**. Special Permit (§73-36) to allow for the operation of a physical culture establishment. C6-3 Zoning District C6-3 district.

238-14-BZ

98-100 Franklin Street, Bounded by Avenue of the Americas, Franklin and White Streets, West Broadway, Block 00178, Lot(s) 0029, Borough of **Manhattan, Community Board: 1**. Variance (§72-21) to permit the construction of two mixed residential and commercial buildings on a single zoning lot contrary to §§35-21 & 23-145 (Lot Coverage), 35-24c (Height and setback), 35-52 and 33-23 (minimum width of open area along a side lot li C6-2A district.

239-14-BZ

8008 Harber View Terrace, Harbor View Terrace between 80th Street and 82nd Street, Block 05975, Lot(s) 0076, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-622) to enlarge an existing two story dwelling. R5 zoning district. R2 (SBRD) district.

DOCKETS

241-14-BZ

517 East 117th Street, located within a large scale development located along FDR Drive between East 116th Street and 119th Streets, Block 1715,, Lot(s) 22, 8, Borough of **Manhattan, Community Board: 11**. Special Permit (§73-36) to allow the operation of physical culture establishment (Fitness Center) on a portion of the third floor of the existing large scale development, located within an C4-4 zoning district. C4-4 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 28, 2014, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 28, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

545-56-BZ

APPLICANT – Eric Palatnik, P.C., for Williamsbridge Road Realty corporation, owner.

SUBJECT – Application June 12, 2014 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired October 19, 2012; Waiver of the Rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001-2007 Williamsbridge Road aka 1131 Neil Avenue, southeast corner of Williamsbridge Road and Neil Avenue, Block 4306, Lot 20, Borough of Bronx.

COMMUNITY BOARD #11BX

164-94-BZ

APPLICANT – Jeffrey Chester, Esq., for Tuckahoe Realty LLC., owner; LRHC Park Chester NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of physical culture establishment (*Lucille Roberts*), which expired on March 1, 2014. C1-2/R6 zoning district.

PREMISES AFFECTED – 84 Hugh Grant Circle, Cross Bronx Expressway Sr. South, Block 3794, Lot 109, Borough of Bronx.

COMMUNITY BOARD #9BX

195-02-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for McDonald's Real Estate Company, owner; Lauren Enterprises, lessee.

SUBJECT – Application December 2, 2013 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility with a legalization of a small addition to the establishment, which expired on February 11, 2013; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, between Drew and Ruby Streets, Block 4471, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

61-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP., for Guido Passarelli, Trustee, owner.

SUBJECT – Application April 18, 2014 – Proposed construction of a two-story two family dwelling located within the bed of unmapped street, contrary to Article 3 Section 36 of the General City law. R3X (SRD) zoning district.

PREMISES AFFECTED – 11 Massachusetts Street South, southeast corner of intersection of Hylan Boulevard and Massachusetts Street, Block 7936, Lot 3(tentative), Borough of Staten Island.

COMMUNITY BOARD #3SI

109-14-A

APPLICANT – Eric Palatnik, P.C., for Carlo Saccheri, owner.

SUBJECT – Application May 23, 2014 – Appeal to permit the construction of a proposed two story commercial building which does not front on a legally, mapped street contrary to GCL Section 36. M1-1 SRD Zoning District.

PREMISES AFFECTED – 44 Marjorie Street, south of Sharrotts Road and East of Arthur Kill Road, Block 7328, Lot 645, Borough of Queens.

COMMUNITY BOARD #3Q

ZONING CALENDAR

186-13-BZ

APPLICANT – Harold Weinberg, P.E., for Apostollis Goutsios, owner.

SUBJECT – Application June 21, 2013 – Special Permit (§73-622) for an enlargement to an existing single family home, contrary to side yard regulations (ZR 23-461) of the zoning resolution. R5 (BR) zoning district.

PREMISES AFFECTED – 117 Gelston Avenue, east side 125'-13/8" south of 90th Street and 92nd Street, Block 6089, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #10BK

26-14-BZ

APPLICANT – Francis R. Angelino, Esq., for The Hewitt School, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing community facility (*Hewitt School*), contrary to maximum building height (24-591); street wall height (§24-592); and rear yard requirements (§24-36). R8B zoning district.

PREMISES AFFECTED – 45 East 75th Street aka 42-76 East 76th Street, north side, East 75th Street through block to south side E 76th between Park & Madison Avenues, Block

CALENDAR

1390, Lot(s) 28, 46, Borough of Manhattan.

COMMUNITY BOARD #8M

31-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Bnos Square of Williamsburg, owner.

SUBJECT – Application February 11, 2014 – Special Permit (§73-19) to allow a conversion of an existing Synagogue (*Bnos Square of Williamsburg*) building (Use Group 4 to (Use Group 3). M1-2 zoning district.

PREMISES AFFECTED – 165 Spencer Street, 32'6" Northerly from the corner of the northerly side of Willoughby Avenue and easterly side of Spencer Street, Block 1751, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #3BK

56-14-BZ

APPLICANT – Walter Gorman, P.E.P.C., for Leemilts Petroleum Ink., owner; Capitol Petroleum Group, lessee.

SUBJECT – Application April 10, 2014 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses; Waiver of the Rules. C1-3/R3-A zoning district.

PREMISES AFFECTED – 161-51/6 Bailey Boulevard, northwest corner of Guy Brewer Boulevard, Block 12256, Lot 36, Borough of Queens.

COMMUNITY BOARD #12Q

100-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Medina Eco Friendly Ink., owner; Blink Macombs Road, Ink., lessee.

SUBJECT – Application May 8, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (PCE) to be operated as Blink Fitness within a portions of a new two-story commercial building (currently under construction). C8-3 zoning district.

PREMISES AFFECTED – 1490 Macombs Road, east side of Macombs Road intersection Macombs Road, W 172nd Street and Inwood Avenue, Block 2865, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

114-14-BZ

APPLICANT – Eric Palatnik, P.C., for Boris Vaysurb, owner.

SUBJECT – Application May 30, 2014 – Special Permit (§73-622) for enlargement of an existing two story single family dwelling contrary to floor area ratio, open space and lot coverage (ZR 23-141); side yard (ZR 23-461) and less than the rear yard requirements (ZR 23-47). R4 zoning district.

PREMISES AFFECTED – 2442 East 14th Street, between

Avenue X and Avenue Y, Block 7415, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #15BK

150-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Gotham Broad LIC, owner; BFX 30 Broad Street LLC dba BFX Studio, lessee.

SUBJECT – Application June 25, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*BFX Studio*) in portions of the second floor and second floor mezzanine with an entrance at the ground level. C5-5 zoning district.

PREMISES AFFECTED – 30 Broad Street, between Exchange Place and Beaver Street, Block 24, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 7, 2014
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez.

SPECIAL ORDER CALENDAR

822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC., owner.

SUBJECT – Application January 9, 2014 – Amendment (§11-412) to convert existing automotive service bays into an accessory convenience store and enlarge the accessory building at an existing gasoline service station. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, southwest corner of Victory Boulevard and Manor Road, Block 709, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

964-87-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilt Petroleum, Ink., owner; Lotus Management Group II, LLC, lessee.

SUBJECT – Application April 21, 2014 – Amendment to a previously approved Variance for the operation of an Automotive Service Station (UG 16B), with accessory uses.

The Amendment seeks to convert a portion of a service bay to an accessory convenience store; Extension of Time to obtain a Certificate of Occupancy which expired on May 10, 2012; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 786 Burke Avenue, aka 780-798 Burke Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12B

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

203-92-BZ

APPLICANT – Jeffrey Chester, Esq., for Mowry Realty Associates LLC., The Fitness Place Forest Hills NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Lucille Roberts Gym*), which expired on March 1, 2014. C2-3(in R5D) zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side of Austin Street between 70th Avenue and 70th Road, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

302-01-BZ

APPLICANT – Deirdre A. Carson, Esq. for Creston Avenue Realty LLC, owner.

SUBJECT – Application May 28, 2014 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on December 11, 2013. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, West side of Creston Avenue between East 190th and East 191st Streets. Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for deferred decision.

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph Dweck, owner.

SUBJECT – Application December 31, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a physical culture establishment (*Dolphin*) on the second floor of a two-story commercial building which expired on January 1, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on February 5, 2009; Waiver of the Rules. C4-2A zoning district.

PREMISES AFFECTED – 8701 4th Avenue, southwest corner of 4th Avenue and 87th Street, Block 6050, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for deferred decision.

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center INK., owner.

SUBJECT – Application April 21, 2014 – Extension of Term of a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (*Stillwell Sports Center*); Amendment to permit minor alterations; Extension of Time to obtain a Certificate of Occupancy which expired on January 1, 2012; Waiver of the Rules. C8-2 zoning district.

PREMISES AFFECTED – 2402 86th Street, south Coroner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

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ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

19-12-A

APPLICANT – Law Offices of Marvin B Mitzner, LLC., for 38-30 28th Street, LLC., owner.

SUBJECT – Application May 9, 2014 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28th Street, west side of 28th Street between 38th and 39th Avenues, Block 386, Lot 27, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for an eight-story hotel building at the subject site; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of 28th Street, between 38th Avenue and 39th Avenue; and

WHEREAS, the site has 25 feet of frontage along 28th Avenue and 2,450 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with an eight-story, 16-room hotel building with 12,250 sq. ft. of floor area (the “Building”); and

WHEREAS, the site was formerly located within an M1-3D zoning district; and

WHEREAS, the applicant states, on July 16, 2007, the Department of Buildings (“DOB”) issued Alteration Permit No. 402232534-01-AL (the “Alteration Permit”) authorizing construction of the Building in accordance with the M1-3D zoning district regulations; and

WHEREAS, on October 7, 2008, (the “Enactment Date”), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site from M1-3D to M1-2/R5B, within the Special Long Island City District; and

WHEREAS, the applicant states that as of October 7,

2008, the Alteration Permit had been obtained and 100 percent of the foundation had been completed; as such, per ZR § 11-331, the right to continue construction vested and the applicant had until October 7, 2010 to complete construction and obtain a certificate of occupancy; however, as of that date, construction had not been completed and a certificate of occupancy had not been obtained and within 30 days after that date, an application to the Board to extend the time to complete construction pursuant to ZR § 11-332 had not been filed; and

WHEREAS, accordingly, under the subject calendar number, the applicant sought a common law vested right to continue construction under the M1-3D regulations; and

WHEREAS, the applicant notes that in connection with the prior application, by letter dated February 29, 2012, DOB indicated that the Alteration Permit was lawfully issued, authorizing construction of the Building prior to the Rezoning Date; and

WHEREAS, on June 5, 2012, the Board adopted a resolution recognizing that a vested right to continue construction under the Alteration Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the Alteration Permit for a term of two years, to expire on June 5, 2014; and

WHEREAS, the applicant represents that, as of June 5, 2014, construction has not been completed and a certificate of occupancy has not been issued for the Building; and

WHEREAS, thus, the applicant now seeks an additional two-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant notes that, subsequent to the 2012 grant and prior to the June 5, 2014 expiration of the permits, the following work was performed: installation and inspection of the elevator, installation of the marquee, completion of stucco on the north and south elevations, completion of masonry on front and rear elevations, installation and testing of the sprinkler system, installation of roof drains and storm lines, completion of waste lines, vents and plumbing roughing for bathrooms, completion of window sills, windows and doors throughout the building, completed rough carpentry on metal studs on all stories, installation of first story granite, installation of trash chutes on all stories and installation of sheetrock from second story to bulkhead; and

WHEREAS, the applicant states that it has expended a total of \$3,719,567 to date, which represents 78 percent of the total costs to complete the Building; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide an updated commitment letter for the construction loan; and (2) provide a status update on Department of Environmental Protection (“DEP”) approval for the backflow preventer ; and

WHEREAS, in response, the applicant states that it will not be able to obtain a commitment letter until after the requested extension of time is granted; and

WHEREAS, as to DEP approval for the backflow preventer, the applicant states that approval is imminent; and

WHEREAS, the Board has reviewed the evidence in the

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record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew Alteration Permit No. 402232534-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on October 7, 2016, subject to the following condition:

THAT DEP approval for the backflow preventer is obtained prior to DOB's issuance of the Alteration Permit;

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

106-14-A

APPLICANT – Greenberg Traurig, LLP., for 84 William Street Property Owner LLC.

SUBJECT – Application May 22, 2014 – Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30 for the construction of residential apartments to an existing building. C5-5 (LM) zoning district.

PREMISES AFFECTED – 84 William Street, northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #10M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

142-14-A

APPLICANT – Goldman Harris LLC., for 92 Henry Fulton LLC., owner.

SUBJECT – Application June 17, 2014 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C6-4 zoning district.

PREMISES AFFECTED –92 Fulton Street, south side of Fulton Street, between William Street to the West and Gold Street to the east, Block 77, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

300-12-BZ

CEQR #13-BSA-049M

APPLICANT – Davidoff Hutcher & Citron LLP, for Columbia Grammar & Preparatory School, owner.

SUBJECT – Application October 19, 2012 – Variance (§72-21) to permit an enlargement of an existing school building (*Columbia Grammar and Preparatory*), contrary to lot coverage (§24-11), permitted obstruction (§24-33), rear yard equivalent (§24-332), initial setback distance (§24-522), height (§23-692), and side yard (§24-35(b)) regulations. R7-2 zoning district.

PREMISES AFFECTED – 36 West 93rd Street aka 33 West 92nd Street, between Central Park West and Columbus Avenue, Block 1206, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 1, 2013, acting on Department of Buildings Application No. 121161857, reads in pertinent part:

1. ZR 24-11 - The lot coverage proposed exceeds that permitted.
2. ZR 24-382 - Provide the required minimum rear yard equivalent. The project site is a through lot, with a depth in excess of 180'-0".
3. ZR 24-33 - Only a (1) one story building portion, with a maximum height of 23'-0", is allowed as a permitted obstruction in a rear yard equivalent. The proposed building envelope indicates two stories and a mechanical space in the rear yard equivalent.
4. ZR 24-522 - The building envelope does [not] meet the initial setback requirement.
5. ZR 23-692 - The frontage on 92nd Street is less than 45'-0" in width. The proposed street-wall is higher than the width of the narrow street and higher than the lowest abutting building.
6. ZR 24-35B The proposed side yard, at the new vertical extension, is less than the required 8'-0"; and

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WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-2 zoning district within the Upper West Side/Central Park West Historic District, the enlargement of an existing school building, which does not comply with zoning regulations for lot coverage, permitted obstruction, rear yard equivalent, encroachment into the required initial setback distance, width and height of street wall, and side yard, contrary to ZR §§ 24-11, 24-382, 24-33, 24-522, 23-692, and 24-35; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with a continued hearing on August 19, 2014, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends disapproval of the application; and

WHEREAS, certain members of the community testified at the hearing and provided testimony in opposition to the application (collectively, the “Opposition”), citing primary concerns about traffic generated by the school and construction disturbance; other concerns from a shareholder at 36 West 93rd Street include that there are inconsistencies between the subject application and a 2008 variance application for the School, specifically as related to the School’s needs; and

WHEREAS, certain members of the community, the West Side Organization for Responsible Development (“WORD”), represented by counsel, cited concerns about traffic associated with the school and construction disturbance and requested the following conditions for any approval: (1) the School continue to work with the community to address traffic concerns and provide a written traffic plan; (2) the School provide a traffic, noise, and pollution baseline report prior to the Board’s decision; (3) the School commit to not increasing enrollment by more than 30 students over the next ten years; (4) the School ensure that all construction is performed during the summer, and only on weekdays between the 9:00 a.m. and 5:00 p.m.; (5) the School provide the Board with a site logistics plan and construction calendar prior to a final resolution; (6) the rooftop not be used as a play area; and (7) that the community be consulted prior to installation of the rooftop HVAC systems, which must include sufficient sound mitigation; and

WHEREAS, this application is brought on behalf of Columbia Grammar & Preparatory School (the “School”), a nonprofit educational institution founded in 1764, which serves students from grades pre-kindergarten through 12; and

WHEREAS, the subject site is an interior through lot with frontage on West 93rd Street and West 92nd Street between Central Park West and Columbus Avenue, within an R7-2 zoning district within the Upper West Side/Central Park West Historic District; and

WHEREAS, the site is currently occupied by a five-story building with a sub-cellar and cellar constructed in 1996;

the building includes 13 classrooms and ancillary facilities for students in grades 5 and 6, 12 high school classrooms, and several shared spaces, including two dining areas and four art studios/technology classrooms; and

WHEREAS, the applicant notes that the School also occupies several other buildings in the vicinity: the lower division (pre-kindergarten through grade 4) occupies five interconnected brownstones on West 94th Street and 5 West 93rd Street, directly behind the brownstones; and the upper division (grades 7 through 12) occupies 4 West 93rd Street; and

WHEREAS, the School proposes to (1) build out an existing setback area at the West 92nd Street frontage at existing floors three and four; (2) build out an existing setback area at the West 93rd Street frontage at the existing fifth floor; and (3) add two new floors so that, upon completion, the building will consist of a sub-cellar, cellar and seven floors above grade; and

WHEREAS, the enlarged building will include ten additional middle school classrooms for a total of 23 classrooms, an additional art/technology studio and a library for the middle school, in addition to new space for faculty and administration offices; and

WHEREAS, while certain portions of the enlarged building will still be used by high school students (the cellar/first floor level will be occupied by high school classrooms and dining, half of the second floor will be high school classrooms and the third floor will contain shared art studios and technology classrooms), the number of high school classrooms will be reduced from 12 to eight and upper floors four through seven will be occupied solely by the middle school; and

WHEREAS, the applicant proposes to increase the building height from 68 feet to 95 feet, excluding rooftop bulkheads and mechanical space; increase the floor area from 28,187 sq. ft. (3.37 FAR) to 40,778 sq. ft. (4.88 FAR) (54,301 sq. ft. (6.50 FAR) is the maximum permitted); and

WHEREAS, because the enlargement does not comply with the applicable bulk regulations in the subject zoning district, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School’s programmatic need to create a self-contained middle school and alleviate overcrowding in the high school building; and

WHEREAS, specifically, the applicant notes that the relocation of the seventh graders to the new building will free up space at the high school building; and

WHEREAS, the School also proposes to increase enrollment by 30 students which is still substantially below the demand for new admissions; and

WHEREAS, the applicant states that the proposed enlargement would result in 151 sq. ft. of space per student compared to the average new middle school in the region which provides 178.3 sq. ft. per student and 216.7 sq. ft. per high school student; and

WHEREAS, the applicant states that the proposed floor area to be added to the existing building is required to fulfill

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the School's longstanding goal of having a self-contained middle division consisting of grades five through seven; and

WHEREAS, the applicant asserts that the existing building is too small to accommodate the organization of the school with lower, middle and upper divisions, as it was not designed to accommodate the necessary classrooms and ancillary space needed for a middle division; and

WHEREAS, the applicant asserts that the School is one of the last public or private schools in New York City with grades pre-kindergarten through 12 that does not have a separate middle school; and

WHEREAS, the applicant asserts that in the years since the School's facilities were developed, educators have come to recognize the benefits of grouping grades kindergarten through 12 into lower, middle and upper schools; and

WHEREAS, however, the applicant states that the School's space limitations have required it to maintain grades five and six in the existing building at the subject site as the final two years of its grammar school division and to house grade seven in its high school building; and

WHEREAS, the applicant notes that the proposed floor area is significantly less than the maximum allowed for the underlying zoning district; and

WHEREAS, the applicant asserts that the proposed encroachment into the existing rear yard equivalent (above the 23-ft. height for a permitted obstruction), combined with the build-out of the existing setback on West 93rd Street and the two additional floors above the West 92nd Street portion of the building, allows the school to create a rational design for the additional classrooms and ancillary facilities while minimizing the proposed height of the enlarged building to seven stories; and

WHEREAS, the applicant asserts that practical difficulties arise in complying strictly with the underlying bulk regulations; and

WHEREAS, additionally, the applicant asserts that the unique features affecting the site include (1) the lot's narrowness and odd shape with its varying frontages on West 92nd Street and West 93rd Street and (2) the existing building's unique footprint, configuration and structural support system; and

WHEREAS, as to the lot size and shape, the applicant notes that it has 45 feet of frontage along West 93rd Street and widens by approximately five feet at its eastern property line, then narrows at the midblock, and the property line runs slightly diagonal towards West 92nd Street where it has frontage of 35 feet; and

WHEREAS, further, the applicant states that the footprint of the existing under-built building reflects the inability to use space that would have been available in a more typical square-shaped lot; and

WHEREAS, the applicant states that the existing building's constraints require that the enlargement be constructed within the required setback area along West 93rd Street and within the rear yard equivalent, as well as above the 23-ft. tall portion of the building along West 92nd Street, thereby exceeding the maximum permitted lot coverage; and

WHEREAS, the applicant notes that the required sky exposure plane would be encroached into by 7'-7" along the West 93rd Street façade at the fifth and sixth floors due to the inclusion of a middle school library at the fifth floor and two new classrooms at the sixth floor; and

WHEREAS, the applicant asserts that if the street wall on West 93rd Street were to set back to comply with the 7'-7" sky exposure plane encroachment, it would effectively eliminate the proposed rooms because their depth would be too narrow (with the presence of the existing elevator and stairwell); and

WHEREAS, the applicant asserts that the proposed location of the majority of the additional proposed floor area along West 93rd Street is driven in part by the existing building's structural support system; the applicant's architect and engineer state that the load capacity for the addition along West 93rd Street is designed to be distributed across both building sections to be supported by the building's existing column and foundation support system; and

WHEREAS, the applicant represents that its development team reviewed the possibility of shifting the proposed floor area from the West 93rd Street portion of the building to the West 92nd Street frontage, and determined that the existing transfer beams in the West 92nd Street portion of the building are already very close to their allowable stress level; and

WHEREAS, further, the applicant states that the relocation of the floor area is programmatically problematic since the building narrows along West 92nd Street, which does not accommodate sufficiently-sized classrooms; and

WHEREAS, finally, the applicant states that a major piece of mechanical equipment must be located in the proposed fourth floor addition, and its required air intake and discharge would be directed toward the "open" area on that floor; and

WHEREAS, accordingly, the applicant states that the propose enlargement most effectively meets the School's programmatic needs; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School along with the existing constraints of the site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission,

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the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the site is located within the West Side Urban Renewal Area and the existing building was limited, in 1996, by the then-applicable West Side Urban Renewal Plan controls affecting the site, which were more restrictive than the applicable zoning bulk regulations (the West Side Urban Renewal Plan was established in 1962 and expired in 2002); and

WHEREAS, because the site is within the Upper West Side/Central Park West Historic District, the applicant has obtained a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”), dated September 18, 2013 and amended January 14, 2014; and

WHEREAS, the applicant cites to LPC’s designation report which states that the area’s residential buildings range from three-, four-, and five-story row houses, to twelve- to seventeen-story multiple dwellings and also include eight- to twelve-story apartment hotels and studio buildings that are on both the avenues as well as streets; and

WHEREAS, additionally, the applicant cites to LPC’s recognition that the Upper West Side is characterized by a variety of institutional buildings intended to meet the social, educational, and religious needs of neighborhood residents; and

WHEREAS, the applicant also cites to the Certificate of Appropriateness which states that “...the proposed additions will not cause damage to [the] historic fabric or any significant historic features of the district; that the construction of rooftop additions on this through-lot building will result in an overall building height that relates to the taller surrounding buildings; that the geometry of the addition, which raises the street wall two floors on West 93rd Street with set-back addition and two floors on West 92nd Street, will be compatible with the massing of other institutional buildings in this historic district...”; and

WHEREAS, the applicant asserts that the height and bulk of the proposed enlarged school building will be in context with the nearby buildings on the north and south sides of both West 92nd Street and West 93rd Street; and

WHEREAS, specifically, the applicant cites to 50 West 93rd Street to the west, which is eight stories, and 70 West 93rd Street, which is 31 stories; to the east of the high school building is 2 West 93rd Street with 16 stories and 325 Central Park West with 16 stories; and on the north side of West 92nd Street there are One West 92nd Street with 15 stories, 7 West 92nd Street with seven stories, 35 West 92nd Street, with 13 stories, and 73 West 92nd Street with 31 stories; on the north side of West 93rd Street to the west there is 37 West 93rd Street with eight stories and 689 Columbus Avenue with 16 stories; and to the east on the north side of West 93rd Street, 333

Central Park West with 12 stories; and

WHEREAS, in response to concerns raised by the Community Board regarding the potential impact on the light and air to the immediately adjacent buildings along West 92nd Street, the proposed fourth floor (which contains mechanical equipment) has been reduced in depth to be located closer to West 92nd Street, and the proposed third floor roof has been sloped along the sides to allow additional light and air to the adjacent neighbors; and

WHEREAS, in response to the Opposition’s concerns, the applicant asserts first that the traffic concerns associated with the School exist now and will not be exacerbated by the proposed enlargement of the building; and

WHEREAS, the applicant represents that its traffic consultant is conducting additional field observations and will develop additional recommendations to address the traffic concerns including whether it would be helpful to install a red light camera and left turn traffic signal at West 93rd Street and Central Park West or closing West 93rd Street to traffic during peak times; and

WHEREAS, the School states that it is committed to developing a comprehensive traffic plan for review and comment from the community and agrees to continue to work with the community to try to resolve existing traffic issues; the School commits to participating in a working group with representatives from WORD to ensure safe traffic and pedestrian conditions; and

WHEREAS, the applicant states that it considered several other suggestions which it concluded were not feasible such as student drop-off on Columbus Avenue, including staggered drop-off and pick-up times, student shuttles from offsite, and drop-off on West 92nd Street; and

WHEREAS, in response to the Opposition’s proposed conditions, the School states that (1) it will establish a traffic plan in consultation with WORD, with whom it will meet on an ongoing basis to focus on traffic concerns and that it will coordinate with the Department of Transportation; (2) it has complied fully with CEQR requirements and that noise, traffic, and air quality analyses were not triggered by the proposal; (3) it proposes to add 30 students, but will not agree to cap enrollment; (4) it will strive to complete construction during the summer, only on weekdays and during business hours but notes the possibility of unforeseen delays which may require additional time; (5) it cannot produce a site logistics plan and construction calendar at this point in the process; (6) it does plan to use the sixth-floor rooftop for a play area but will fence and buffer it as well as limit the hours to school hours not to be later than 5:00 p.m.; and (7) the rooftop mechanicals will occupy the fourth-floor roof and will include an acoustical enclosure, all of which is subject to LPC approval; and

WHEREAS, finally, as to the Opposition’s concerns about inconsistencies between the subject application and the 2008 variance application, the applicant states that numerous circumstances have changed since the 2008 application, which should be viewed independently from the subject application and that all current and prior claims were

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credible, based on the respective circumstances; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions of the North Building and the South Building; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, as noted, the applicant revised the plans to provide additional setback and slope at the fourth and third floor, respectively; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, 13BSA049M dated October 12, 2012; and

WHEREAS, the EAS documents that the operation of the School would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R7-2 zoning district within the Upper West

Side/Central Park West Historic District, the enlargement of an existing school building, which does not comply with zoning regulations for lot coverage, permitted obstruction, rear yard equivalent, encroachment into the required initial setback distance, width and height of street wall, and side yard, contrary to ZR §§ 24-11, 24-382, 24-33, 24-522, 23-692, and 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 3, 2014" – fourteen (14) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a floor area of 40,778 sq. ft. (4.88 FAR) and total height of 95 feet, exclusive of bulkheads, as illustrated on the BSA-approved plans;

THAT the School will establish a traffic plan to improve traffic flow at the site, in a timely manner; measures, in consultation with the community working group, may include a red light camera and left turn traffic signal, among other measures;

THAT fencing and buffering will be installed around the sixth-floor rooftop play area, which will have hours not to exceed school hours and no use after 5:00 p.m.;

THAT the use of the fourth-floor rooftop will be limited to mechanical systems accessible for maintenance/service-related work, will comply with all Noise Code requirements, and will include an acoustical enclosure for the generator;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

THAT construction will proceed in accordance with ZR § 72-23;

THAT all construction will be in conformance with the LPC Certificate of Appropriateness, dated September 18, 2013 and amended January 14, 2014;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

50-14-BZ CEQR #14-BSA-131K

APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.

SUBJECT – Application April 1, 2014 – Re-adoption of September 16, 2014 approval with required LPC approval. Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.

PREMISES AFFECTED – 825 Manhattan Avenue aka 181

MINUTES

Calyer Street, north side of Calyer Street, 25' west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2014, acting on DOB Application No. 320903572, reads, in pertinent part:

Proposed physical culture or health establishment is not a use permitted as of right; contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3A zoning district, within the Greenpoint Historic District, the operation of a physical culture establishment (“PCE”) in the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in the *City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a flag lot with 25 feet of frontage along Manhattan Avenue and 79 feet of frontage along Calyer Street; and

WHEREAS, the site has 10,400 sq. ft. of lot area and is located within a C4-3A zoning district, within the Greenpoint Historic District; and

WHEREAS, the site is occupied by a one-story commercial building with 10,400 sq. ft. of floor area (1.0 FAR); and

WHEREAS, the proposed PCE will occupy the entire building, including 10,400 sq. ft. of floor space in the cellar, for a total PCE size of 20,800 sq. ft.; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated September 24, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA131K dated April 1, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3A zoning district, within the Greenpoint Historic District, the operation of a PCE in the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 16, 2014” (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 7, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved

MINUTES

only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

130-14-BZ

CEQR #14-BSA-172M

APPLICANT – Francis R. Angelino, Esq., 605 fifth Property Owner, LLC, owner; Chiva-Som Spa, lessee.

SUBJECT – Application June 11, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Chiva-Som Spa*) will be on the entire fifth floor of a six-story commercial building, located within a C5-3 zoning district.

PREMISES AFFECTED – 605 Fifth Avenue, east Side Fifth Avenue between East 48th & 49th Streets, Block 1284, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 20, 2014, acting on DOB Application No. 121983185, reads, in pertinent part:

ZR 32-10 – Proposed physical culture establishment in C5-3 is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, within the Special Midtown District, the operation of a physical culture establishment (“PCE”) on the fifth story of an existing six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in the *City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice-Chair Hinkson; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Fifth Avenue, between West 48th Street and West 49th Street, within a C5-3 zoning district, within the Special Midtown District; and

WHEREAS, the site has approximately 25 feet of

frontage along Fifth Avenue and 2,500 sq. ft. of lot area; and
WHEREAS, the site is occupied by a six-story commercial building with approximately 13,750 sq. ft. of floor area (3.6 FAR); and

WHEREAS, the proposed PCE will occupy 1,996 sq. ft. of floor area on the fifth story of the building; and

WHEREAS, the PCE will be operated as Chiva-Som Spa; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 10:00 a.m. to 8:00 p.m. and Sunday, from 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-172M, dated August 4, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, within the Special Midtown District, the operation of a PCE on the fifth story of an existing six-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 4, 2014”- two (2) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 7, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

MINUTES

THAT all massages must be performed by New York State licensed massage therapists;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

144-14-BZ

CEQR #15-BSA-013M

APPLICANT – Sheldon Lobel, P.C., for Park 121 Realty LLC., owner; Leake & Watts Services Inc. Children's Learning Center, lessee.

SUBJECT – Application June 20, 2014 – Special Permit (§73-19) to allow for a Use Group 3 special education preschool on the second floor of an existing building. M1-4 district.

PREMISES AFFECTED – 1751 Park Avenue, east side of Park Avenue between East 122nd Street and East 121 Street, Block 1770, Lot(s) 72, 4, 3, 2, 1, 101, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 13, 2014, acting on DOB Application No. 104138443, reads in pertinent part:

Proposed Use Group 3 school is not permitted in an M1-4 zoning district pursuant to ZR Section 42-10; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-4 zoning district, the conversion of the second story of an existing four-story mixed

community facility and commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in the *City Record*, and reopened on September 23, 2014, and then to decision on October 7, 2014, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, this application is brought on behalf of the Children’s Learning Center (the “School”), which operates a pre-school program for children with certain disabilities, including disorders on the autism spectrum; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Park Avenue and 121st Street, within an M1-4 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 1, 2, 4, 72, and 101; it has 9,512 sq. ft. of lot area, 127 feet of frontage along Park Avenue, and 75 feet of frontage along 121st Street; and

WHEREAS, the site is occupied by a four-story mixed community facility and commercial building with 38,050 sq. ft. of floor area (4.0 FAR); the applicant represents that a bakery occupies the cellar and first story of the building and a non-profit institution without sleeping accommodations occupies the third and fourth stories; the second story is vacant; and

WHEREAS, the applicant proposes to renovate the second story of the building (approximately 7,649 sq. ft. of floor area (0.8 FAR)) to accommodate the School, which is classified as Use Group 3 daycare; and

WHEREAS, the applicant states that, under the proposal, the second story will serve an estimated 90 children ranging in age from three to five years and approximately 50 employees, and provide related sanitary facilities and administrative offices; and

WHEREAS, in particular, the applicant proposes a total of ten classrooms, a sensory gymnasium, two therapy rooms (speech and occupational), three administrative offices, two small group rooms, and restrooms; and

WHEREAS, the applicant represents that the School seeks to relocate from its current location at 310 West 103rd Street, which is inadequate; and

WHEREAS, the applicant states that the majority of its students live in Manhattan and the Bronx; and

WHEREAS, the applicant notes that the site is subject to a City Planning Commission special permit pursuant to ZR § 74-291, which authorizes occupancy of the third and fourth stories of the building by the Bailey House, a non-profit institution without sleeping accommodations (Use Group 4A); the Bailey House provides certain social services to men, women, and children living with HIV/AIDS, including health care, counseling, support groups, substance abuse treatment, education, job training, and employment assistance; and

MINUTES

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-4 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that it conducted a search of nearby residence and commercial districts with the following site criteria: (1) space within an existing building to minimize development costs; (2) a landlord with a willingness to renovate the space; (3) a space with access and lighting sufficient to meet the daycare licensing standards; and (4) proximity to recreation (parks and playgrounds) and public transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of five buildings within the area and on sites where Use Group 3 is permitted as-of-right: 3560 Broadway; 51-55 East 125th Street; 461 West 126th Street; 4280-4298 Broadway, 2 Bennett Avenue; and 5030 Broadway; and

WHEREAS, the applicant represents that each building was unsuitable for the School, either because the rent was too expensive, the space could not be configured to comply with daycare licensing standards, and/or the landlord would not renovate the space; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant states that the site is adjacent to an R8 zoning district, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that an ambient noise survey was initially conducted at the site in connection with the Bailey House special permit application discussed above; the survey indicated that the predominant noise sources in the area would be vehicular and train traffic and that, at the time of monitoring, interior noise levels were well in excess of what would be considered acceptable; however, the survey was conducted before the interior finishes of the Bailey House were installed; thus, certain assumptions were made about the anticipated attenuation of

the finished space and it was determined that noise levels for the Bailey House would be acceptable; and

WHEREAS, the applicant states that the School's proposed space on the second story is in the midst of renovation – interior walls and partitions are in place and a drop ceiling has been partially installed but the floor remains a bare concrete slab; under these conditions, on September 18, 2014, a noise survey was conducted; the survey reflected interior noise levels at 45.9 dB(A); and

WHEREAS, the applicant notes that although 45.9 dB(A) is nearly one dB(A) above the 45 dB(A) that is considered acceptable according to the CEQR Technical Manual, its consultant represents that the installation of flooring, carpeting, and furniture will bring the noise levels within 45 dB(A); and

WHEREAS, in addition, the applicant states that the Department of Environmental Protection ("DEP") reviewed the noise consultant's analyses and determined that noise levels would be acceptable within the School; and

WHEREAS, at hearing, the Board expressed concerns regarding the proposed lobby of the building, which was proposed to be shared by the School and the Bailey House; and

WHEREAS, in response, the applicant revised the proposal to provide a separate building entrance and a dedicated elevator for the School; the applicant also provided detailed egress and occupant load calculations to demonstrate that both the School and the Bailey House will have compliant means of egress from their respective spaces; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's use will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-4 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant notes that section of Park Avenue fronting the site has two-way, single lane traffic separated by the elevated tracks of the Metro North Railroad line; and

WHEREAS, the applicant states that during the morning drop-off period (8:00 a.m. to 9:00 a.m.), an average of 259 vehicles per hour traverse Park Avenue and that during the afternoon pick-up, an average of 429 vehicles per hour traverse Park Avenue; thus, the applicant asserts that the vehicular traffic is moderate; and

WHEREAS, the applicant represents that the School's students will arrive by private mini-buses, with capacities of 15 students-per-bus, necessitating between five and six bus trips on a typical morning or afternoon (depending on how many students enroll in the full- or half-day programs); teachers and staff will accompany the students from the buses directly into the lobby of the building; and

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WHEREAS, the applicant notes that the mini-buses will not be able to simultaneously queue in front of the site along Park Avenue to load and offload students; accordingly, buses will load and unload one at-a-time and queue on neighboring side streets; and

WHEREAS, the applicant states that it will apply to the Department of Transportation (“DOT”) for a change in curbside parking regulations in front of the site along Park Avenue to establish a School No Standing Zone for Monday through Friday, from 8:00 a.m. to 4:00 p.m.; and

WHEREAS, thus, the applicant states that, based on its assessment of existing traffic conditions in the vicinity, the School can operate safely without significant impacts; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 15-BSA-013M, dated June 18, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow, on a site in an M1-4 zoning district, the conversion of the second story of an existing four-story mixed community facility and commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received October 6, 2014” – twelve (12) sheets; and *on further condition*:

THAT a dedicated entrance and a dedicated elevator will be maintained for the School at all times;

THAT DOB will review and approve the egress and occupant load calculations for the School;

THAT any change in the operator of the school requires review and approval by the Board;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

206-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 910 Lanark Road, clustered in the Broad Channel neighborhoods, Edgemere/Somerville and Rockaway Park neighborhoods of Community District 14. Block 15500, Lot 602, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-2

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zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the east side of Lanark Road, approximately 200 feet south of East Ninth Road, within an R3-2 zoning district; and

WHEREAS, the site has 37 feet of frontage along Lanark Road and 2,775 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged two-story, single-family home with 450 sq. ft. of floor area (0.16 FAR); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 868 sq. ft. of floor area (0.31 FAR); and

WHEREAS, the applicant states that the proposed building complies in all respects with the bulk regulations of the subject R3-2 district except that a rear yard depth of 21’-7” is proposed (a minimum rear yard depth of 30’-0” is required, per ZR § 23-47); and

WHEREAS, accordingly, the applicant seeks a special permit to allow the proposed rear yard; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the

permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a wider side yards, and a deeper front yard than the existing building; therefore, the proposal will provide significantly more open space on the site than is currently provided; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement

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satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.31 FAR) and a minimum rear yard depth of 21'-7", as illustration the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

207-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 41 West 12th Road, clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and Rockaway Park Neighborhoods of Community District 14. Block 15316, Lot 64. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson,

Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for a vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the north side of West 12th Road, between Cross Bay Boulevard and Jamaica Bay, within an R3-2 zoning district; and

WHEREAS, the site has 24.5 feet of frontage along West 12th Road and 2,450 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 700 sq. ft. of floor area (0.29 FAR); the existing home has the following non-compliances: a front yard depth of 8'-0" (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); and side yards with widths of 3'-3" (western side yard) and 0'-6" (eastern side yard) (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each, per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 868 sq. ft. of floor area (0.36 FAR); the new building will provide a front yard depth of 20'-0", a rear yard depth of 49'-0", a western side yard width of 5'-2½", and eastern side yard width of 4'-6"; and

WHEREAS, the applicant represents that the buildings directly east and west of the proposed building are built to the sites' common side lot lines; as such, the building directly east of the site will be located 4'-6" from the proposed building and the building directly west of the site will be located 5'-2½" from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§

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54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant the applicant seeks a special permit to allow construction of the new building with a distance of less than 8'-0" from the buildings directly west and east of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds

that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 49'-0" where a depth of only 30'-0" is required, and increase in front yard depth from a non-complying 8'-0" to a complying 20'-0"; in addition, it increases one side yard width by 1'-11" and increases the other side yard width by 4'-0"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.36 FAR) and side yards with minimum widths of 5'-2½" and 4'-6", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed

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in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

209-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 592 Beach 43rd Street, Queens. Block 15961, Lot 102.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the east side of Beach 43rd Street, between Delmore Court and an inlet of Jamaica Bay, within an R4-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Beach 43rd Street and 1,900 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,504 sq. ft. of floor area (0.75 FAR); the existing home has the following non-compliances: a front yard depth of 8’-6” (a minimum front yard depth of 18’-0” is required, per ZR § 23-45); one side yard with width of 3’-9” along the northern boundary of the site (the requirement is two side yards with minimum widths of 4’-0”, per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and a rear yard depth of 8’-0” (a minimum rear yard depth of 30’-0” is required, per ZR § 23-47); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,400 sq. ft. of floor area (0.70 FAR); the new building will provide a front yard depth of 18’-9”, a northern side yard width of 3’-0”, a southern side yard width of 3’-0”, and a rear yard depth of 26’-3”; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with rear yard depth of 26’-3” and a northern side yard width of 3’-0”; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the rear

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and side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear and side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint and a complying front yard depth; in addition, it increases the southern side yard by 3'-0" and increases the rear yard depth by 18'-3"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-47 and 23-461; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,400 sq. ft. of floor area (0.70 FAR), side yards with minimum widths of 3'-0", and a rear yard depth of 26'-3", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

210-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.R4A zoning district.

PREMISES AFFECTED – 69-52 Thursby Avenue, Queens. Block 16050, Lot 63.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R4A zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner

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Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the northeast corner of the intersection of Beach 72nd Street and Thursby Avenue, within an R4A zoning district; and

WHEREAS, the site has 100 feet of frontage along Beach 72nd Street, 22.5 feet of frontage along Thursby Avenue, and 2,250 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 867 sq. ft. of floor area (0.39 FAR); the existing home has the following non-compliances: a front yard depth of 5’-10” along Thursby Avenue (a minimum front yard depth of 18’-0” is required along Thursby Avenue, per ZR § 23-45); a front yard depth of 4’-0” along Beach 72nd Street (a minimum front yard depth of 10’-0” is required along Beach 72nd Street, per ZR § 23-45) and no side yard (the requirement is one side yard with a minimum width of 2’-0”, per ZR § 23-461 and non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 868 sq. ft. of floor area (0.39 FAR); the new building will provide a front yard depth of 18’-9” along Thursby Avenue, a front yard depth of 4’-3” along Beach 72nd Street, a rear yard depth of 45’-7”, and one side yard width of 4’-3”; and

WHEREAS, the applicant represents that the building directly east of the proposed building is built to the sites’ common side lot line; as such, the building directly east of the site will be located 4’-3” from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8’-0” is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a distance of less than 8’-0” from the building directly east of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the

Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

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WHEREAS, the applicant also contends that the proposal reflects a smaller footprint and a rear yard depth of 45'-7" where a depth of only 20'-0" is required; in addition, the proposal reflects increases in front yard depth from 4'-0" to 4'-3" and 5'-10" to 18'-9" and an increase in side yard depth from 0'-0" to 4'-3"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R4A zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.39 FAR), front yards with minimum depths of 4'-3" and 18'-9", a minimum rear depth of 45'-7", and one side yard with a minimum width of 4'-3", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

211-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 3-41 Beach 87th Street, Queens. Block 16119, Lot 101.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for a vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, the owner of the adjacent site testified in opposition to application, citing concerns regarding the proposed height and front yard depth of the building; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of Beach 87th Street between Dormans Court and the Rockaway Freeway, within an R4-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Beach 87th Street and 2,268 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two flood-damaged, one-story, single-family homes with a combined 1,800 sq. ft. of floor area (0.79 FAR); the existing site has the following yard non-compliances: a front yard depth of 6'-4" (a minimum front yard depth of 10'-0" is required, per ZR § 23-45); and side yards with widths of 3'-0" (northern

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side yard) and 1'-2" (southern side yard) (the requirement is two side yards with minimum widths of 4'-0", per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,400 sq. ft. of floor area (0.62 FAR); the new building will provide a front yard depth of 10'-0", a rear yard depth of 43'-9", a northern side yard width of 3'-0", and southern side yard width of 3'-0"; and

WHEREAS, the Board notes that, initially, the applicant proposed a front yard depth of 18'-0"; however, in response to concerns raised by the owner of the adjacent site, the proposal was amended to reflect a front yard depth of 10'-0"; and

WHEREAS, the applicant represents that the building directly north of the site is located 1'-6" from the sites' common side lot line and that the building directly south of the site is located 1'-10" from the sites' common side lot line; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR § 23-461, side yards must have a minimum width of 4'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a distance of less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor

impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 43'-9" where a depth of 30'-0" is required, and increase in front yard depth from a non-complying 6'-4" to a complying 10'-0"; in addition, it increases the width of one side yard by 1'-10"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part

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617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for a vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,400 sq. ft. of floor area (0.62 FAR) and side yards with minimum widths of 3'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

212-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5D zoning district.

PREMISES AFFECTED – 209A Beach 100th Street, Queens. Block 16156, Lot 94.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit,

pursuant to ZR § 64-92, to permit, on a site within an R5D (C1-3) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of Beach 100th Street between the Rockaway Freeway and Rockaway Beach Boulevard, within an R5D (C1-3) zoning district; and

WHEREAS, the site has 52 feet of frontage along Beach 100th Street and 1,048 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 429 sq. ft. of floor area (0.41 FAR); the existing site has the following yard non-compliances: a front yard depth of 2'-6" (a minimum front yard depth of 5'-0" is required, per ZR § 23-45); side yards with widths of 1'-0" (southern side yard) and 16'-8" (northern side yard) (the requirement is one side yard with a minimum width of 8'-0", per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and a rear yard depth of 5'-8" (a minimum rear yard depth of 10'-0" is required); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 868 sq. ft. of floor area (0.83 FAR), a front yard with a depth of 3'-0", side yards with widths of 3'-0" (southern side yard) and 16'-8" (northern side yard), and a rear yard with a depth of 3'-11½"; and

WHEREAS, accordingly, the applicant seeks a special permit to allow the proposed front and rear yards; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

MINUTES

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a lot coverage of 41 percent, which is identical to the existing home at the site and 20 percent less than is permitted as-of-right in the subject R5D (C1-3)

district; in addition, the front yard depth is increased by 0'-6", and the southern side yard is increase by 2'-0"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R5D (C1-3) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front and rear yards, contrary to ZR §§ 23-45 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.83 FAR), a maximum lot coverage of 41 percent, a minimum front yard depth of 3'-0", and a minimum rear yard depth of 3'-11½", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

MINUTES

350-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of an 11-story community facility/residential building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for adjourned hearing.

174-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for 58-66 East Fordham Road, owner; LRHC Fordham Road LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the reestablishment of an expired physical culture establishment (*Lucille Roberts*) on the second floor, contrary to (§32-31). C4-4 zoning district.

PREMISES AFFECTED – 2449 Morris Avenue a/k/a 58-66 East Fordham Road, Block 3184, Lot 45, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

185-13-BZ

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to

November 18, 2014, at 10 A.M., for adjourned hearing.

271-13-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

38-14-BZ

APPLICANT – Eric Palatnik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

59-14-BZ

APPLICANT – Caroline G. Harris, for School Settlement Association Ink., owner.

SUBJECT – Application April 10, 2014 – Variance (§72-21) to permit the construction of a four-story plus penthouse community facility (UG 4), contrary to (24-11). R6B zoning district.

PREMISES AFFECTED – 114-122 Jackson Street, located on the SW corner of the Intersection of Jackson Street and Manhattan Avenue. Block 2748, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

104-14-BZ

APPLICANT – Warshaw Burnstein, LLP., for Sam Spikes, LLC, owner; 287 Broadway Fitness Group, LLC., lessee.

SUBJECT – Application May 15, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on a portion of the ground

MINUTES

and second floors of a new building, contrary to (§32-31). C4-3 zoning district.

PREMISES AFFECTED – 282 South 5th Street aka 287 Broadway, between Broadway and West of Marcy Avenue, Block 2460, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

117-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Trinity Episcopal School Corporation, owner; Trinity Housing Comp. Inc., lessee.

SUBJECT – Application June 3, 2014 – Variance (§72-21) to permit the enlargement of a school (*Trinity School*), including construction of a 2-story building addition with rooftop turf field, contrary to required rear yard equivalents, lot coverage, height and setback, and minimum distances between buildings. Split zoning lot within R7-2 and C1-9 zoning districts.

PREMISES AFFECTED – 101 W 91st Street, 121 & 139 W 91st St and 114-124 W 92nd St, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17, 29, 40, 9029, Borough of Manhattan.

COMMUNITY BOARD # 7M

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

141-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP., for 24655 Broadway Associates, owner; Soul Cycle 2465 Broadway, LLC, lessee.

SUBJECT – Application June 23, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*SoulCycle*) on the first floor of an existing commercial building, contrary to (§32-31). C4-6A zoning district.

PREMISES AFFECTED – 2465 Broadway, east side of Broadway, 50ft. south of intersection of West 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

208-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 119 East 7th Road, Queens. Block 15454, Lot 21.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for deferred decision.

BULLETIN

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DOCKETS

New Case Filed Up to October 21, 2014

242-14-BZ

212 East 57th Street, between 3rd Avenue and 2nd Avenue on the south side of 57th Street, Block 1330, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to allow for operation of a physical culture establishment on portions of the cellar and first floor, located within an C1-9 zoning district. C1-9 district.

243-14-BZ

1660 Richmond Avenue, Richmond Avenue between Victory Boulevard and Merrill Avenue, Block 2236, Lot(s) 133, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-243) to permit the legalization and continued use of an existing eating and drinking establishment (UG 6) with an accessory drive-through in an C1-2/R3X zoning district. C1-2/R3X district.

244-14-BZ

22 West 32nd Street, 32nd Street between Fifth Avenue and Sixth Avenue, Block 833, Lot(s) 57, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to operate a physical culture establishment (PCE) within an existing building located within an C6-4 zoning district. C6-4 district.

245-14-BZ

133-31 39th Avenue, 37th Avenue, Prince Street, 39th Avenue and College Point Boulevard, Block 4972, Lot(s) 65, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit proposed construction of a mixed-use development contrary to bulk, parking and loading berth requirements; Special Permit (§73-66) to permit the penetration of the flight obstruction area of LaGuardia Airport contrary to §61-20 C4-2 district.

246-14-BZ

210 Joralemon Street, S/W/C formed by Joralemon Street and Court Street, Block 266, Lot(s) 7501, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to operate a physical culture establishment (PCE) within an existing building located within C5-2A (DB), C5- zoning districts. C5-2A (DB), C5- district.

247-14-BZ

109 Eltingville boulevard, east side of Eltingville Road, approximately 450 ft. north of intersection with Wilson Avenue, Block 5507, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit proposed alteration of existing on-family dwelling located on a through lot that does not provide an open area with a minimum depth of 60 feet midway between street lines, located in an R3A(SRD) zoning district. R3A(SRD) district.

248-14-BZ

1565 Forest Avenue, Forest Avenue Between Barrett and Decker Avenues, Block 1053, Lot(s) 130, 133 138 189 166, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-36) to allow the operation of a new physical culture establishment in the existing building, located within an C4-1 zoning district. C4-1 district.

249-14-BZ

200 Baychester Avenue, Hutchinson River Parkway and Baychester Avenue, Block 5141, Lot(s) 6, Borough of **Bronx, Community Board: 10**. Special Permit (§73-36) to obtain a special permit to operate a physical culture establishment (PCE) within an existing commercial building. (C4-3) zoning district. C4-3 district.

250-14-A

5401 Grosvenor Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and West 250th Street., Block 5831, Lot(s) 50, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and Vested Rights. (R1-2) zoning district. R1-2 district.

251-14-A

5031 Grosvenor Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and W. 250th Street, Block 5831, Lot(s) 60, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a certificate of Occupancy under the common law and vested rights, (R1-2) zoning district. R1-2 district.

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252-14-A

5021 Grosvenor Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and W 250th Street, Block 5831, Lot(s) 70, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and vested rights.. (R1-2) zoning district. R1-2 district.

253-14-A

5310 Grosvenor Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue, Block 5839, Lot(s) 4018, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and vested rights. (R1-2) zoning district. R1-2 district.

254-14-A

5300 Grosvenor Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and W 250th Street, Block 5839, Lot(s) 4025, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and vested rights. (R1-2) zoning district. R1-2 district.

255-14-A

5041 Goodridge Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and W 250th Street, Block 5830, Lot(s) 3940, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a certificate of Occupancy under the common law and vested rights.(R1-2) zoning district. R1-2 district.

256-14-A

5030 Goodridge Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and W 250th Street, Block 5829, Lot(s) 3630, Borough of **Bronx, Community Board: 8**. Extension of time to complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and vested rights. (R1-2) zoning district. R1-2 district.

257-14-A

5040 Goodridge Avenue, Located on Grosvenor Avenue and Goodridge Avenue to the East of Iselin Avenue and W 250th Street, Block 5829, Lot(s) 3635, Borough of **Bronx, Community Board: 8**. Extension of time complete construction of eight (8) homes and obtain a Certificate of Occupancy under the common law and vested rights.(R1-2)

zoning district. R1-2 district.

258-14-BZ

112 Atlantic Avenue, Located on the southeast corner of the intersection formed by Atlantic Avenue and Henry street, Block 285, Lot(s) 6, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to permit the construction of a 4-story mixed-use building of an existing with commercial use on the first floor in a (R6) zoning district. R6 district.

259-14-BZ

68-74 Trinity Place, Trinity Place and Greenwich Street, Block 51, Lot(s) 7, Borough of **Manhattan, Community Board: 1**. Variance (§72-21): to permit the proposed structure in height rear yard of the interior lot portion of the site contrary to (ZR 33-23 and ZR 33-26) of the zoning resolution. Located within an C5-5 SLMD) zoning district. C5-5(SLMD) district.

260-14-BZ

100 East End Avenue, , Block 1581, Lot(s) 23, Borough of **Manhattan, Community Board: 8**. Variance (§72-21): to permit the construction of a three-story enlargement to the existing school, contrary to floor area, rear yard, height and setback requirements. (R8B/R10A) zoning district. R8B/R10A district.

261-14-BZ

944 East 23rd Street, Block 7586, Lot(s) 64, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of an existing single family residence located in a residential district. (R2) zoning district. R2 district.

262-14-A

260 South Street, Between Rutgers Slip & Pike Place/Allen Street on South Street, Block 241, Lot(s) 10, Borough of **Manhattan, Community Board: 3**. Variance (G107-Appendix(G) seek to build within the flood plain. The building is part of the overall East River Esplanade and will provide needed uses, such as public restrooms and storage for the maintenance entity of the park. M1-4 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

NOVEMBER 18, 2014, 10:00 A.M.

APPEAL CALENDARS

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 18, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

833-52-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Zonar LLC, owner.

SUBJECT – Application March 14, 2014 – ZR (§11-411) Extension of Term for the continued operation of a gasoline service station (*Sunoco*) which expired on January 15, 2012; Amendment to convert the existing service bays to a convenience store; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 5916-30 Foster Avenue, Foster Avenue and Southwest corner of Ralph Avenue, Block 7955, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

164-04-BZ

APPLICANT – Warshaw Burstein, LLP., for 2241 Westchester Avenue Realty Corp., owner; Castle Hill Fitness Group, LLC., lessee.

SUBJECT – Application April 25, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness Center*) occupying the entire second floor of a two story building which expired on July 15, 2014. R6/C2-4 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, Northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

265-14-A

APPLICANT – NYC Housing Preservation & Development, for Pasquale D'Angelis, owner.

SUBJECT – Application October 27, 2014 – Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District.

PREMISES AFFECTED – 3812 Atlantic Avenue, between Beach 38th and Beach 40th Streets, Block 7043, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #13BK

266-14-A

APPLICANT – NYC Housing Preservation & Development, for Jack Suben, owner.

SUBJECT – Application October 27, 2014 – Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District.

PREMISES AFFECTED – 3740 Atlantic Avenue, between Beach 38th and West 37th Streets, Block 7044, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #13BK

267-14-A

APPLICANT – NYC Housing Preservation & Development, for Theresa Liberi, owner.

SUBJECT – Application October 27, 2014 – Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District.

PREMISES AFFECTED – 3742 Atlantic Avenue, between Beach 38th and West 37th Streets, Block 7044, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #13BK

CALENDAR

NOVEMBER 18, 2014, 1:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 18, 2014, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

321-13-BZ

APPLICANT – Eric Palatnik, P.C., for Alejandro Finardo, owner.

SUBJECT – Application December 18, 2013 – Variance (§72-21) for the construction of a three family home on a vacant lot, contrary to side yard requirements (§23-462(a)) and the parking space requirements of (§25-32). R5 zoning district.

PREMISES AFFECTED – 37-19 104th Street, between 37th Avenue and 37th Road, Block 1771, Lot 42, Borough of Queens.

COMMUNITY BOARD #3Q

329-13-BZ

APPLICANT – Alexander Levkovich, for Sam Ravit, owner.

SUBJECT – Application December 31, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (23-141). R3-1 zoning district.

PREMISES AFFECTED – 145 Girard Street, east side of Girard Street, approximately 600' south of intersection with Hampton Avenue, Block 8750, Lot 386, Borough of Brooklyn.

COMMUNITY BOARD #15BK

94-14-BZ

APPLICANT – Dennis D. Dell'Angelo, for Rivka Shapiro, owner.

SUBJECT – Application May 5, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1150 East 22nd Street, west side of East 22nd Street, 140' north of Avenue "K", Block 7603, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #3BK

119-14-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1151 Third Avenue LLC, owner; Flywheel Sport Inc., lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Flywheel Sports*) of the second and third floor of the existing building. Located within a C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

120-14-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1151 Third Avenue, owner; Upper East Fitting Room LLC, lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Fitting Room*) on the fifth floor of the existing building. C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67, north East corner of 3rd Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

121-14-BZ

APPLICANT – Law office of Jay Goldstein, PLLC, for 1151 Third Avenue, owner; Strengthen Lengthen Tone LLC., lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to legalize for the operation of a physical culture establishment (*SLT*) on the 4th floor of the existing building. C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, northeast corner of 3rd Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

151-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Fifth Partners, LLC., owner; Exhale Enterprises Inc., owner.

SUBJECT – Application June 26, 2014 – Special Permit (§73-36) to legalize the operation of a physical culture establishment/ yoga studio (*Exhale Enterprises*) on a portion of the ground floor of the subject 12-story commercial building. C6-4A zoning district.

PREMISES AFFECTED – 19 West 21st Street, northerly side of West 21st Street, 309' 10" westerly of Fifth Avenue, Block 823, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #5M

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 21, 2014
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez

SPECIAL ORDER CALENDAR

302-01-BZ

APPLICANT – Deirdre A. Carson, Esq. for Creston Avenue Realty LLC, owner.

SUBJECT – Application May 28, 2014 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on December 11, 2013. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, West side of Creston Avenue between East 190th and East 191st Streets. Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, and an extension of time to obtain a certificate of occupancy for a parking facility accessory to a commercial use; and

WHEREAS, a public hearing was held on this application on September 9, 2013 after due notice by publication in *The City Record*, with a continued hearing on October 7, 2014, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southwest corner of Creston Avenue and East 191st Street, partially within an R8 zoning district and partially within a C4-4 zoning district; and

WHEREAS, on December 7, 1948, under BSA Cal. No. 861-48-BZ, the Board granted a variance to permit the site to be used for the parking of more than five motor vehicles, for a term of two years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on January 10, 1988; and

WHEREAS, on April 23, 2002, under the subject calendar number, the Board reestablished the expired variance pursuant to ZR § 11-411, to permit an accessory parking facility for commercial use at the site, for a term of

ten years, which expired on April 23, 2012; a condition of the grant was that a new certificate of occupancy be obtained by April 23, 2003; and

WHEREAS, on January 10, 2012, the Board granted a six month extension of time to obtain a certificate of occupancy, which expired on July 10, 2012; and

WHEREAS, on December 11, 2012, the Board granted a ten-year extension of term, to expire on April 23, 2022, and a one-year extension of time to obtain a certificate of occupancy, to expire on December 11, 2013; and

WHEREAS, the applicant states that a certificate of occupancy has not yet been obtained; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained due to delays at the Department of Buildings; and

WHEREAS, at hearing, the Board directed the applicant to replace the existing chain link fence at the site and to repair the concrete retaining wall on which the fence rests; and

WHEREAS, in response, the applicant agreed to replace the existing fence with a black aluminum fence; the applicant notes that the installation of the fence and the repair of the concrete retaining wall will take approximately four months; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 23, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on October 21, 2015; *on condition*:

THAT a new certificate of occupancy will be obtained by October 21, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 200683590)

Adopted by the Board of Standards and Appeals October 21, 2014.

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152-07-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph Dweck, owner.

SUBJECT – Application December 31, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a physical culture establishment (*Dolphin*) on the second floor of a two-story commercial building which expired on January 1, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on February 5, 2009; Waiver of the Rules. C4-2A zoning district.

PREMISES AFFECTED – 8701 4th Avenue, southwest corner of 4th Avenue and 87th Street, Block 6050, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a physical culture establishment (“PCE”), which expired on January 1, 2013, and an extension of time to obtain a certificate of occupancy, which expired on February 5, 2009; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, with a continued hearing on August 19, 2014, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the southeast corner of the intersection of Fourth Avenue and 87th Street, within a C4-2A zoning district, within the Special Bay Ridge District; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the applicant represents that the PCE occupies 7,698 sq. ft. of floor area on the second story; and

WHEREAS, the PCE is operated as a Dolphin Fitness; and

WHEREAS, on February 5, 2008, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the operation of an existing PCE at the site, for a term of five years, to expire on January 1, 2013; a condition of the grant was that a certificate of occupancy would be obtained by February 5, 2009; and

WHEREAS, the applicant states that a certificate of occupancy has not yet been obtained for the PCE; and

WHEREAS, accordingly, the applicant now seeks a further extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that its acquisition of the certificate of occupancy was delayed due to financial hardships; and

WHEREAS, based upon its review of the record, the Board finds that requested extensions of term and time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated February 5, 2008, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration, to expire on January 1, 2023, and to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on October 21, 2015; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received August 7, 2014’-(3) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on January 1, 2023;

THAT a certificate of occupancy will be obtained by October 21, 2015;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the hours of operation will be limited to Monday through Thursday, from 5:00 a.m. to 12:00 a.m., Friday from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 21, 2014.

724-56-BZ

APPLICANT – Eric Palatnik, P.C., for Prela Enterprises Ink., owner.

SUBJECT – Application June 12, 2014 – Amendment of a previously approved variance which permitted automotive repair (UG 16B). Application is to amend the length of an extension of term that was granted the Board from five years to ten years which expired November 20, 2012. R3-2 zoning district.

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PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, west side of Francis Lewis Boulevard, between 42nd Road and Northern Boulevard, Block 5373, Lot 26, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

362-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corp., owner.

SUBJECT – Application June 10, 2014 – Extension of Term for the continued operation of an accessory commercial open parking lot and accessory commercial storage shed which expired on May 11, 2014. R8 (*Special Clinton District*).

PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street between 9th and 10th Avenue, Block 1054, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 133 East 58th Street LLC, owner; Manhattan Sports Performance LLC, lessee.

SUBJECT – Application June 13, 2004 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation a physical culture establishment (*Velocity Performance Sports*) which expired September 1, 2014. C5-2 zoning district.

PREMISES AFFECTED – 133 East 58th Street, between Lexington And Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

57-09-A thru 112-09-A

129-09-A thru 152-09-A

APPLICANT – Eric Palatnik, P.C., for Maguire Woods Estates, owners.

SUBJECT – Application May 14, 2014 – Application to permit an extension of time to complete construction and obtain a certificate of occupancy under the previously granted Common Law vested rights for a residential development approved under the prior zoning district regulations. R3-2(SSRD) zoning district.

PREMISES AFFECTED – Santa Monica Lane, El Camino Loop, Moreno Court, Block 6979, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain certificates of occupancy for 80 homes within a large-scale residential development at the subject site; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 21, 2014; and

WHEREAS, the subject site is 24.3 acre parcel located northwest of the intersection of Maguire Avenue and Bloomingdale Park, within an R3-1 zoning district, within the Special South Richmond Development District (“SSRDD”); and

WHEREAS, the applicant proposes to develop the site 176 semi-detached homes (350 dwelling units) and a community facility building (the “Development”); and

WHEREAS, because the Development was within the SSRDD, City Planning Commission (“CPC”) approval was required, and on December 22, 1999, CPC issued the following approvals, in relation to Development: (1) special permits pursuant to ZR §§ 107-76 and 107-77, to allow adjustments in the boundaries of designated open space and the construction of a community facility building in designated open space; (2) authorizations pursuant to ZR §§ 107-64 and 107-65 for the removal of trees and the modification of existing topography; and (3) certifications pursuant to ZR §§ 107-22, 107-221, 107-222, 107-323, and 107-50 to permit development within a site containing designated open space, active recreational facilities in designated open space, public pedestrian ways, and the substitution of plant material; and

WHEREAS, on that same date, the applicant also secured (1) a zoning text change to provide an adjustment of the designated open space boundaries on map 33a and 33b in Appendix A of the SSRD regulations; (2) an amendment to

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the City Map to eliminate the mapped but unbuilt streets at the site to facilitate the proposed development and to map a turnaround; and (3) a special permit pursuant to ZR § 74-732 to allow a sewer pumping station that would convey sewage from the site to a new sewer in order to avoid the need to install a sewer line across the designated open space and associated freshwater wetlands on the adjacent site; and

WHEREAS, on March 6, 2000, the Department of City Planning (“DCP”) sent a letter to the DOB Staten Island Borough Commissioner, advising DOB of the approved CPC actions and providing copies of the approved site plan; and

WHEREAS, on January 9, 2002, under Job No. 500384238, DOB issued a permit for site work related to the Development; and

WHEREAS, on February 8, 2002, under Job No. 500520206, DOB approved a Builder’s Pavement Plan for the Development; and

WHEREAS, on August 22, 2002, the proposed site plan was approved by the Fire Department for access and hydrant requirements; and

WHEREAS, on December 23, 2002, the Department of Environmental Protection (“DEP”) approved the proposed water main for the Development; and

WHEREAS, on March 12, 2003, DCP sent a letter to the Staten Island Borough Commissioner, confirming the renewal of the CPC actions related to the Development; and

WHEREAS, on June 23, 2003, the Department of Transportation issued permits for the construction of new sidewalks for the Development; and

WHEREAS, on July 17, 2003, DEP approved the construction of a private sanitary drain for the Development; and

WHEREAS, on May 10, 2004, the New York State Office of the Attorney General approved a “No Action Application” in connection with the March 2004 creation of the Maguire Avenue Homeowners’ Association; and

WHEREAS, on August 12, 2004 (the “Enactment Date”), CPC enacted the Lower Density Growth Management text amendment (the “LDGMA”), which rendered the Development non-complying in terms of minimum front yard depth (the requirement is now 18’-0”), minimum rear yard depth (the requirement is now 30’-0” with landscaped buffer with a minimum depth of 8’-0”), parking (three spaces are now required for a two-family home), and planting strips (a planting strip with a minimum depth of 8’-0” is now required between private roads and adjacent properties); and

WHEREAS, the Development complied with the prior zoning requirements, which permitted a front yard with a minimum depth of 5’-0”, a rear yard with a minimum depth of 15’-0”, one parking space, and a 3’-0” planting strip between private roads and adjacent properties; and

WHEREAS, prior to the Enactment Date, the developer installed all of the sewer infrastructure, water mains, and hydrants for the entire development, and excavated the roadways, cleared the land, performed landscaping, and installed fencing for the development; and

WHEREAS, additionally, construction commenced and

72 of the homes were constructed as of the Enactment Date and were issued certificates of occupancy by DOB; and

WHEREAS, based on the construction completed as of the Enactment Date, the developer filed applications under the subject calendar numbers seeking recognition of a vested right to complete the entire Development under the common law; and

WHEREAS, because permits for 102 of the homes had not been issued prior to the Enactment Date, the applicant requested that the Board consider the Development as a single integrated project subject to a separate line of cases that establish the Single Integrated Project Theory (“SIPT”), which allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep’t, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep’t, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, by resolution dated April 13, 2010, the Board recognized that the Development was within the SIPT doctrine and made the necessary findings to determine that the right to complete the Development without complying with the LDGMA vested; and

WHEREAS, accordingly, the Board authorized the issuance of all DOB permits related to the Development; a condition of the grant was that construction would be completed and certificate of occupancy would be obtained for all buildings within the Development by April 13, 2014; and

WHEREAS, however, as of April 13, 2014, construction had not been completed and certificates of occupancy had not been issued for all buildings within the Development; and

WHEREAS, therefore, the applicant now seeks an extension of time to complete construction and obtain a certificates of occupancy for the buildings within the Development under SIPT and the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the typical vested rights analysis is an inquiry into whether a permit was lawfully issued prior to a change in law; however, as noted above, under the SIPT, it is acknowledged that not all permits for a project will have been issued prior to such change in law; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2^d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been

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undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as noted above, the Board has recognized that substantial construction was performed and substantial expenditures were made with respect to the Development prior to the Enactment Date; and

WHEREAS, the applicant notes that subsequent to the 2010 grant, 22 homes were completed and received certificates of occupancy; in addition, 28 DOB permits were issued and the homes are in various stages of construction and an additional 52 permits must be obtained to complete the Development; and

WHEREAS, as to expenditures, the applicant represents that the developer has expended \$9,900,000 in connection with the 22 completed homes (\$450,000 per home) and will expended an additional \$12,600,000 to complete the 28 homes presently in various stages of construction; finally, the applicant states that the final 52 homes will cost \$23,400,000 to complete; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant explains that compliance with the present LDGMA provisions would result in the loss of four of the proposed two-family homes and the conversion of 100 two-family homes to single-family homes; and

WHEREAS, the applicant contends that the reduced unit count and conversion to single-family homes would lead to a diminished profit over the entire development site, resulting in a loss of more than \$22,200,000; and

WHEREAS, the applicant notes that compliance with the LDGMA requirements would also result in the need for new surveys, lot subdivisions, street redesign, and new architectural plans; and

WHEREAS, the Board agrees that the non-recoupable expenditures related to the need to redesign the development, and the lost revenue arising from the reduced unit count and conversion of the homes, when viewed in the aggregate, constitute a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the

owner of the site a four-year extension of time to complete construction and obtain a certificates of occupancy.

Therefore it is Resolved, that this application to renew DOB Permit Nos. 510067348, 510067357, 510067366, 510067375, 510067384, 510067437, 510067446, 510067455, 510067464, 510067473, 510067311, 510067482, 510067507, 510067516, 510067525, 510067543, 510067703, 510067712, 510067687, 510067785, 510067776, 510067641, 510067650, 510067767, 510065322, 510065340, 510065402, 510065411, 510065368, 510065395, 510065359, 510065331, 510065386, 510065377, 510065055, 510065064, 510065073, 510065082, 510064289, 510064270, 510064261, 510064298, 510064305, 510064314, 510062753, 510062799, 510062780, 510062575, 510062806, 510062815, 510062824, 510062833, 510062842, 510062851, 510062860, 510062879, 510067758, 510067696, 510067678, 510067669, 510067721, 510067730, 510065126, 510065135, 510065144, 510065091, 510065108, 510065117, 510064369, 510063226, as well as all related permits for various work types, either already issued or necessary to complete construction of the Development, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for four years from the date of this resolution, to expire on October 21, 2018.

Adopted by the Board of Standards and Appeals, October 21, 2014.

23-14-A

APPLICANT – Eric Palatnik, P.C., for Cheong Wing Chung & Guo Ying Zhang, owners.

SUBJECT – Application February 5, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district. R2-A zoning district.

PREMISES AFFECTED – 198-35 51st Avenue, 51st Avenue between Weeks Lane and 199th Street, Block 7374, Lot 13, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application seeking a determination that the owner of the premises has obtained the right to complete construction of a two-story, two-family residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2014, and then to decision on October 21, 2014; and

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, a member of the Auburndale Improvement Association submitted testimony in opposition to the application, citing concerns regarding: (1) whether the foundation was completed prior to the rezoning in the first instance; and (2) the absence of an explanation for the delay in completing construction; and

WHEREAS, the subject site is located on the north side of 51st Avenue, between Weeks Lane and 199th Street, within an R2A zoning district; and

WHEREAS, the site has 40 feet of frontage along 51st Avenue, a lot depth of 120 feet, and a lot area of 4,800 sq. ft.; and

WHEREAS, under construction at the site is a two-story, two-family dwelling (the "Building"); and

WHEREAS, the applicant represents that the Building complies with the use and bulk regulations of the former R3-2 zoning district; and

WHEREAS, on August 10, 2010, New Building Permit No. 420204754-01-NB (the "New Building Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, on October 27, 2010 (the "Rezoning Date"), the City Council voted to adopt the Auburndale Rezoning, which rezoned the site from an R3-2 zoning district to an R2A zoning district; and

WHEREAS, the Building is proposed to have 3,180 sq. ft. of floor area (0.6 FAR), a lot coverage of 34.78 percent, and a front yard depth of 15 feet; as such, the Building does not comply with the current zoning, which allows only single-family dwellings, a maximum of 2,400 sq. ft. of floor area, a maximum FAR of 0.5, a maximum lot coverage of 30 percent, and a minimum front yard depth of 20'-0"; and

WHEREAS, the applicant represents that although it completed for the Building prior to the Enactment Date and therefore, pursuant to ZR § 11-331, had until October 27, 2012 to complete construction and obtain a certificate of occupancy, as of that date, construction had not been completed and a certificate of occupancy had not been obtained; and

WHEREAS, in addition, the applicant states that the owner did not seek reinstatement of the New Building Permit pursuant to ZR § 11-332; and

WHEREAS, accordingly, the applicant now seeks recognition of a vested right to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated March 6, 2014, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as noted above, the applicant obtained a permit to construct the Building and performed certain work prior to the Enactment Date; and

WHEREAS, specifically, the applicant states that the work it performed constitutes substantial construction, in that, prior to the Enactment Date, it completed 100 percent of the foundation; in addition, the applicant notes that, subsequent to the Enactment Date, construction proceeded and is nearly complete; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; copies of cancelled checks; construction permits and inspection reports; contractor payment requests; photographs of the site; and an affidavit from the owner of the site attesting to the timing and nature of the work performed prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant represents that the total expenditure paid for construction of the Building is \$488,567, or approximately 89.4 percent, out of the 546,429 cost to complete; and

WHEREAS, as noted, the applicant has submitted a breakdown of costs and expenditures, copies of cancelled

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checks, and an affidavit in support of this representation; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that the owner would incur a loss of approximately \$450,000 if the Building must be modified to comply with R2A regulations, because a complete redesign of the building would be required, including extensive demolition and structural work; additionally, an entire dwelling unit would be lost; and

WHEREAS, accordingly, the applicant represents that complying with the current zoning regulations would result in a serious loss to the owner; and

WHEREAS, the Board agrees that complying with the open space requirements of the R2A district regulations would result in a serious economic loss for the applicant; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made before the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 420204754-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for one year from the date of this grant.

Adopted by the Board of Standards and Appeals, October 21, 2014.

166-12-A

APPLICANT – NYC Department of Buildings.
OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.
SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.
COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for adjourned hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.
SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.
PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for adjourned hearing.

11-14-A thru 14-14-A

APPLICANT – Sheldon Lobel, P.C., for Trimountain LLC, owner.
SUBJECT – Application January 22, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district.
PREMISES AFFECTED – 47-04, 47-06, 47-08 198th Street, south side of 47th Avenue between 197th Street and 198th Street, Block 5617, Lot 34, 35, 36, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

162-14-A

APPLICANT – Rampulla Associates Architects, for Lawrence O O’Friel, owner.
SUBJECT – Application July 9, 2014 – Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A zoning district.
PREMISES AFFECTED – 100 Giegerich Avenue, west side Giegerich Avenue 431.10’ to Minerva Avenue, Block 7796, Lot 11(tentative), Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for decision, hearing closed.

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163-14-A thru 165-14-A

APPLICANT – Ponte Equities, for Ponte Equities, Ink, owner.

SUBJECT – Application July 10, 2014 – Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A zoning district. PREMISES AFFECTED – 502, 504, 506 Canal Street, Greenwich Street and Canal Street, Block 595, Lot 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

235-14-A

APPLICANT – Joseph Jabour, for Kevin & Roxie Voorhees, owners.

SUBJECT – Application September 30, 2014 – Section 36, Article 3 of the General City Law - NYC-HPD Build It Back in a private community known as Seagate which is a private unmapped street for a proposed single family home to replace the dwelling destroyed by Hurricane Sandy. R3-1 zoning district.

PREMISES AFFECTED – 4020 Atlantic Avenue, 200' to Beach 40th Street from east property line, Block 7042, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #13BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

283-13-BZ

CEQR No. 14-BSA-053K

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 30, 2013, acting on DOB Application No. 320734577, reads, in pertinent part:

ZR 42-10 – Physical culture or health establishment is not permitted as of right in M1-1 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-1 zoning district, the operation of a physical culture establishment (“PCE”) on the first story and mezzanine of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with continued hearings on August 19, 2014 and September 23, 2014, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a triangular lot located at the northeast corner of the intersection of 20th Avenue and Dahill Road, within an M1-1 zoning district; and

WHEREAS, the site has approximately 150 feet of frontage along 20th Avenue, approximately 170 feet of frontage along Dahill Road, and 11,376 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with 16,643 sq. ft. of floor area (1.46 FAR); and

WHEREAS, the proposed PCE will occupy the entire building and be operated as NYC Fight Club; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 6:00 a.m. to 11:30 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to remove graffiti from the exterior of the building and to clarify the parking requirements of the site and anticipated parking needs of the PCE; and

WHEREAS, as to the graffiti, the applicant submitted photos depicting the removal of the graffiti; and

WHEREAS, as to parking, the applicant obtained a determination from DOB that parking is not required for the

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PCE; in addition, the applicant represents that: (1) only ten percent of the patrons regularly visiting the PCE will arrive by personal car and that 90 percent will walk or utilize a form of public transportation; (2) public transportation in the vicinity is adequate, in that the F train and the No. 11 bus are within 200 feet of the site and two other buses are within two avenues of 20th Avenue; and (3) on-street parking and local off-street parking facilities are more than adequate to handle the limited auto traffic anticipated; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-053K, dated September 30, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-1 zoning district, the operation of a PCE on the first story and mezzanine of a one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 10, 2014"-(10) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 21, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT since there are no residential uses in the subject building and there are no adjacent residential uses, sound attenuation measures are not necessary;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2015;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 21, 2014.

53-14-BZ CEQR #14-BSA-134M

APPLICANT – Evolution Muay Thai LLC, for 12 West 27 Land, L.P., owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-36) to legalize a physical culture establishment (*Evolution Muay Thai*). M1-6 zoning district.

PREMISES AFFECTED – 12 West 27th Street, 2nd floor, between Broadway and 6th Avenue, Block 828, Lot 56, Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 5, 2014, acting on DOB Application No. 121094804, reads, in pertinent part:

Physical culture establishment is not permitted as of right in M1-6 zoning district and is contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district,

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within the Madison Square North Historic District, the legalization of a physical culture establishment (“PCE”) operating on the second story of an 18-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in the *City Record*, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 27th Street, between Avenue of the Americas and Broadway, within the Madison Square North Historic District; and

WHEREAS, the site has 50 feet of frontage along West 27th Street and 4,938 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 18-story mixed residential and commercial building with approximately 85,076 sq. ft. of floor area (17.23 FAR); and

WHEREAS, the PCE occupies 4,714 sq. ft. of floor area on the second story and is operated as Evolution Muay Thai; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 12:00 p.m. to 9:00 p.m., and Saturday, from 12:00 p.m. to 5:00 p.m., and Sunday, from 12:00 p.m. to 3:00 p.m.; and\

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated March 19, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board noted that it had received complaint regarding odors emanating from the PCE; and

WHEREAS, in response, the applicant stated that it also received the complaint and has installed a new ventilation system; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit and to ensure that the continued operation of the PCE does not negatively impact the

building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA134M dated July 8, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, within the Madison Square North Historic District, the legalization of a PCE operating on the second story of an 18-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 9, 2014”-(2) sheets; *on further condition*:

THAT the term of the PCE grant will expire on October 21, 2019;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT workout padding in the PCE space will be cleaned and sanitized on a regular basis;

THAT charcoal filters will be installed in the PCE space to ensure that odors from the PCE do not migrate into offices throughout the building;

THAT specific sound attenuation measures are not

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necessary since there are no residential uses above or adjacent to the PCE space. The floor of the PCE is eighteen inch concrete slab with 1½ inch foam on top of the slab which will act as a sound buffer;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 21, 2015;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 21, 2014.

105-14-BZ

APPLICANT – Lewis E. Garfinkel, for Caren May, owner.
SUBJECT – Application May 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1224 East 27th Street, west side of East 27th Street, 175' south from Avenue L, Block 7644, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated May 19, 2014, acting on DOB Application No. 320915266, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio exceeds the permitted 50 percent;
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio is less than the required 150 percent;

3. Plans are contrary to ZR 23-461(a) in that the side yard is less than the required 5’-0”;
 4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;
- and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the site has 25 feet of frontage along East 28th Street and 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,637 sq. ft. of floor area (0.65 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to convert the building to a single-family home and increase its floor area from 1,637 sq. ft. (0.65 FAR) to 2,187 sq. ft. (0.88 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 68 percent to 55 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard widths of 3’-0” and 5’-8”;

the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 37’-8” to 20’-0”;

a rear yard with a minimum depth of 30’-0” is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot 0.88 FAR is consistent with the bulk in the surrounding area; in addition, the applicant states that the street wall location and building height are in keeping with the surrounding buildings and submitted a streetscape in support of this assertion; and

WHEREAS, at hearing, the Board directed the applicant to clarify the portion of the proposed attic that constitutes floor

MINUTES

area and to provide further details regarding the adjacent sites; and

WHEREAS, in response, the applicant submitted amended plans, which depict the requested information; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 7, 2014"–(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,187 sq. ft. (0.88 FAR), a minimum open space ratio of 55 percent, side yards with minimum widths of 3'-0" and 5'-8", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 21, 2016; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 21, 2014.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for deferred decision.

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for adjourned hearing.

225-13-BZ

APPLICANT – Eric Palatnik, P.C., for Yitta Neiman, owner.

SUBJECT – Application July 25, 2013 – Variance (§72-21) to permit the development of a three-family, four-story residential building, contrary to use regulations (§42-00). M1-2 zoning district

PREMISES AFFECTED – 810 Kent Avenue, east Side of Kent Avenue between Little Nassau Street and Park Avenue, Block 1883, Lot 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for adjourned hearing.

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to legalize a physical culture establishment (*Brick CrossFit*) on the ground floor and cellar of an existing 10-story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side,

MINUTES

West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces from 346 to 272 spaces for a mixed use building containing UG4 health care and UG 6 office uses. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.

SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to legalize the operation of physical culture establishment (*Brooklyn Athletic Club*) on the cellar, first, second, and third floors in a five-story building. M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

28-14-BZ

APPLICANT – Eric Palatnik, P.C. for McDonald Corporation, owner; Brooklyn Avenue U Enterprises Corporation, lessee.

SUBJECT – Application February 10, 2014 – Special Permit (§73-243) to permit the continued use and (Use Group 6) eating and drinking establishment with an accessory drive-through. C1-2/R4 zoning district.

PREMISES AFFECTED – 3540 Nostrand Avenue, westside of Nostrand Avenue, between Avenue V and Avenue W. Block 7386, Lot(s) 114 and 117. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

45-14-BZ

APPLICANT – Eric Palatnik, P.C., for Athina Orthodoxou, owner.

SUBJECT – Application March 18, 2014 – Special Permit (§73-622) to enlarge an existing semi-detached two story dwelling and to vary the floor area ratio requirements, and to convert the one family home into a two family home. R4-1 zoning district.

PREMISES AFFECTED – 337 99th Street, between 3rd and 4th Avenues, Block 6130, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

115-14-BZ

APPLICANT – Eric Palatnik, P.C., for Suzanne Bronfman, owner; T. Kang Taekwondo USA, Ink., lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to legalize for a physical culture establishment (*T.Kang Tae Kwon Do*) on the cellar and first floor in an existing building. C6-2A zoning district.

PREMISES AFFECTED – 85 Worth Street aka 83 Worth Street, between Church Street and Broadway, Block 173, Lot 2, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for decision, hearing closed.

122-14-BZ

APPLICANT – Lewis E Garfinkel, for Ariel Boiangiu, owner.

SUBJECT – Application October 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home contrary to floor area and open space ZR 23-141; side yards ZR 23-461 and less than the required rear yard ZR 23-47. R2 zoning district.

PREMISES AFFECTED – 1318 East 28th Street, west side of 28th Street 140 feet of Avenue M, Block 7663, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10:00 A.M., for continued hearing.

MINUTES

*CORRECTION

This resolution adopted on October 22, 2013, under Calendar No. 139-92-BZ and printed in Volume 98, Bulletin Nos. 42-43, is hereby corrected to read as

139-92-BZ

APPLICANT – Samuel H. Valencia

SUBJECT – Application May 20, 2013 – Extension of term for a previously granted special permit (§73-244) for the continued operation of a UG12 eating and drinking establishment with dancing (*Deseos*) which expired on March 7, 2013; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, North side 125.53' east of 52nd Street, Block 1316, Lot 76, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on March 7, 2013; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 24, 2013, and then to decision on October 22, 2013; and

WHEREAS, the premises had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, citing concerns about alleged criminal activity at the site; and

WHEREAS, the subject site is located on the north side of Roosevelt Avenue, between 52nd Street and 53rd Street, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as *Deseos*; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1995, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the operation of an eating and drinking establishment with dancing (Use Group 12) on the first floor of an existing three-story building, for a term of three years; and

WHEREAS, subsequently, the grant has been amended

and the term extended at various times; and

WHEREAS, most recently, on August 17, 2010, the Board granted an additional three-year term, which expired on March 7, 2013; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, at hearing, the Board raised concerns about: (1) the lack of windows along the street frontage; (2) the excessive signage displayed near the establishment's entrance; and (3) whether the air conditioning unit in the rear yard was installed in accordance with the approved plans; and

WHEREAS, in response, the applicant stated that it removed the windows from the street frontage as a noise-attenuation measure; as such, it seeks to retain the frontage as previously approved; and

WHEREAS, as to the signage and the condition of the rear yard, the applicant submitted photographs showing the removal of the excessive signage and the installation of the air conditioning unit in accordance with the approved plans; and

WHEREAS, based upon the above, the Board finds 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 *reopens*, and *amends* the resolution, as adopted on March 7, 1995, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for a period of three years from March 7, 2013, to expire on March 7, 2016, *on condition*:

THAT the term of this grant will expire on March 7, 2016;

THAT the above condition will be listed on the certificate of occupancy;

THAT the signage will be in accordance with the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance 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." (DOB Application No. 420634326)

Adopted by the Board of Standards and Appeals, October 22, 2013.

***The Resolution has been corrected to amend the DOB Application No. which now reads: "DOB Application No. 420634326". Corrected in Bulletin Nos. 42-43, Vol. 98, dated October 30, 2014.**

BULLETIN

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November 5, 2014

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195-02-BZ	2797 Linden Boulevard, Brooklyn
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263-14-BZ

1601 Oriental Boulevard, The corner of Oriental Boulevard and Norfolk Street, Block 8757, Lot(s) 23, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to request a special permit to enlarge a on-story dwelling in a residential zoning district. (R3-1) R3-1 district.

264-14-BZ

436 East 149th Street, South side of East 149th Street approximately 215 ft. west of intersection with Brook Avenue, Block 2293, Lot(s) 46, Borough of **Bronx, Community Board: 1**. Special Permit 73-36: to allow a physical culture establishment (P) within portions of the existing commercial building, located within an C4-4 zoning district. C4-4 district.

265-14-A

3812 Atlantic Avenue, Atlantic Avenue between Beach 38th Street and Beach 40th Street, Block 7043, Lot(s) 6, Borough of **Brooklyn, Community Board: 13**. Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District. R3-1 district.

266-14-A

3740 Atlantic Avenue, Atlantic Avenue between Beach 38th Street and West 37th Street, Block 7044, Lot(s) 36, Borough of **Brooklyn, Community Board: 13**. Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District. R3-1 district.

267-14-A

3742 Atlantic Avenue, Atlantic Avenue between Beach 38th Street and West 37th Street, Block 7044, Lot(s) 38, Borough of **Brooklyn, Community Board: 13**. Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. 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.

CALENDAR

NOVEMBER 25, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 25, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

665-39-A & 107-14-A

APPLICANT – Jesse Masyr, Esq/Fox Rothschild, for City Club Realty, LLC., owner.

SUBJECT – Application May 22, 2014 – Amendment to a previously approved waiver of a non-complying exit stair; and an Appeal filed pursuant to MDL Section 310(2)(a) proposed an addition to the existing building which will require a waiver of MDL Section 26(7)pursuant to Section 310. C6.45 SPD zoning district.

PREMISES AFFECTED – 55-57 West 44th Street, between 5th Avenue and Avenue of the Americas, Block 1260, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

NOVEMBER 25, 2014, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 25, 2014, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

125-14-BZ

APPLICANT – Goldman Harris LLC, for 350 East Houston LLC c/o BLDG Management Inc., owner.

SUBJECT – Application June 5, 2014 – Variance (§72-21) to facilitate the construction of a ten-story mixed-use forty - six (46) residential dwelling units and retail on the ground floor and cellar. R8A zoning district.

PREMISES AFFECTED – 11 Avenue C, between East 2nd Street & East Houston Street, Block 384, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #3M

166-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 12 West 27 Land, LP, owner; SoulCycle 27th Street, LLC, lessee.

SUBJECT – Application July 10, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*SoulCycle*) within portion of an existing mixed use building. M1-6 zoning district.

PREMISES AFFECTED – 12 West 27th Street, southside of West 27th Street, 60.5 feet west of Broadway, Block 828, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #5M

Ryan Singer, Executive Director

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REGULAR MEETING TUESDAY MORNING, OCTOBER 28, 2014 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez.

SPECIAL ORDER CALENDAR

229-84-BZ

APPLICANT – Troutman Sanders LLP, for High Definition Realty, LLC. owner; Bally Total Fitness of Greater New York, lessee.

SUBJECT – Application June 16, 2014 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (*Bally's Total Fitness*) which expires on November 27, 2014. M1-1 zoning district.

PREMISES AFFECTED –75-28 Queens Boulevard, block bounded by Queens Boulevard Jacobus Street, 51st Avenue and Kneeland Street, Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term for a physical culture establishment (“PCE”), which expires on November 27, 2014, and an amendment to allow minor partition modifications and a change to the PCE’s hours of operation; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner, Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject site is located at the southwest corner of the intersection of Queens Boulevard and Jacobus Street, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a one-story commercial building with 11,853 sq. ft. of floor area (0.31 FAR); and

WHEREAS, the applicant states that the PCE occupies the entire first story of the building and is operated as Bally Total Fitness; and

WHEREAS, the Board has exercised jurisdiction over

the site since November 27, 1984, when, under the subject calendar number, the Board permitted operation of the PCE on the first story of the building, for a term of ten years, to expire November 27, 1994; and

WHEREAS, the Board extended the term of the grant on August 8, 1995, and again on October 17, 2006, to expire on November 27, 2014; and

WHEREAS, accordingly, the applicant now seeks an extension of term; in addition, the applicant seeks an amendment to permit minor modifications to the layout of the PCE, and a change in the hours of operation to reflect the existing hours of operation (Monday through Thursday, from 6:00 a.m. to 11:00 p.m., Friday, from 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.), which are inconsistent with the approved of hours of operation (Monday through Thursday, from 6:30 a.m. to 10:00 p.m., Friday, from 6:30 a.m. to 10:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m. and Sunday, from 9:00 a.m. to 5:00 p.m.); and

WHEREAS, at hearing, the Board directed the applicant to: (1) repaint the exterior of the building; (2) repair and repaint the fence; and (3) remove the barbed wire from the top of the fence; and

WHEREAS, in response, the applicant submitted photographs depicting the repainting of the building, the partial repair of the fence, and the removal of the barbed wire; and

WHEREAS, the Board then directed the applicant to remove the supports for the barbed wire and to repair the remainder of the fence; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment and extensions of term and time to obtain a certificate are appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 27, 1984, so that as amended the resolution reads: “to permit the noted modifications to the layout of the PCE and its hours of operation and to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received June 16, 2014’-(3) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on November 27, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the hours of operation will be limited to Monday through Thursday, from 6:00 a.m. to 11:00 p.m., Friday, from 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 9:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT the fence will be maintained;

THAT no barbed wire or barbed wire supports will be permitted atop the fence;

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THAT a certificate of occupancy will be obtained by October 28, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 28, 2014.

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center INK., owner.

SUBJECT – Application April 21, 2014 – Extension of Term of a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (*Stillwell Sports Center*); Amendment to permit minor alterations; Extension of Time to obtain a Certificate of Occupancy which expired on January 1, 2012; Waiver of the Rules. C8-2 zoning district.

PREMISES AFFECTED – 2402 86th Street, south Coroner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a physical culture establishment (“PCE”), which expired on January 1, 2012, an extension of time to obtain a certificate of occupancy, which expired on December 9, 2009, and an amendment to allow certain minor modifications to the PCE, including the construction of a mezzanine; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the southeast corner of the intersection of 24th Avenue and 86th Street, within a C8-2 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building with 33,408 sq. ft. of floor area (1.73 FAR); and

WHEREAS, the applicant represents that the PCE occupies 14,402 sq. ft. of floor area on the second story of the building; and

WHEREAS, the PCE is operated as a Dolphin Fitness; and

WHEREAS, the Board has exercised jurisdiction over the site since November 27, 2007, when, under the subject calendar number, the Board permitted the legalization of a PCE on the second floor of the building, for a term of five years, to expire January 1, 2012; a condition of the grant was that a new certificate of occupancy be obtained by May 27, 2008, however, as of that date, a certificate of occupancy had not been obtained and by resolution dated December 9, 2008, the Board granted a one-year extension of time to obtain the certificate of occupancy, to expire on December 9, 2009; and

WHEREAS, the applicant states that a certificate of occupancy has not yet been obtained for the PCE; and

WHEREAS, accordingly, the applicant now seeks an extension of term and a further extension of time to obtain a certificate of occupancy; in addition, the applicant seeks an amendment to permit minor modifications to the layout of the PCE, including the construction of a mezzanine; the applicant represents that the proposed modifications do not increase the total floor area of the PCE; and

WHEREAS, the applicant states that its acquisition of the certificate of occupancy was delayed due to unrelated, open Department of Buildings applications; and

WHEREAS, at hearing, the Board directed the applicant to submit photographs demonstrating that all egress pathways are free of debris and to clear all DOB and Fire Department violations related to the PCE; and

WHEREAS, in response, the applicant submitted the requested photographs and represented that the violations would be removed upon the extension of the PCE term; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment and extensions of term and time to obtain a certificate are appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated February 5, 2008, so that as amended the resolution reads: “to permit the noted modifications to the layout of the PCE, to grant an extension of the special permit for a term of ten years from the prior expiration, to expire on January 1, 2022, and to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on October 28, 2015; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received August 12, 2014’-(4) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on January 1, 2022;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT there will be no change in ownership or

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operating control of the PCE without prior approval from the Board;

THAT the hours of operation will be limited to Monday through Thursday, from 5:30 a.m. to 12:00 a.m., Friday from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.;

THAT the above conditions will appear on the certificate of occupancy;

THAT a certificate of occupancy will be obtained by October 28, 2015;

THAT all DOB and Fire Department violations related to the PCE will be removed by October 28, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 28, 2014.

159-08-BZ

APPLICANT – Jay A. Segal for Greenberg Traurig, LLP, for DJL Family Limited Partnership, owners.

SUBJECT – Application July 18, 2014 – Extension of time to complete construction and Waiver of Rules of Procedure, for a project approved on February 10, 2009, to construct a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time of complete construction pursuant to a previously-granted variance permitting the construction of a seven-story mixed residential and commercial building, which expired on February 10, 2013; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Spring Street, between Lafayette Street and Crosby Street, within an M1-5B zoning district; and

WHEREAS, on February 10, 2009, under the subject calendar number, the Board granted a variance to permit, on a site within an M1-5B zoning district, the construction of a seven-story mixed residential (Use Group 2) and commercial (Use Group 6) building, contrary to use regulations; and

WHEREAS, pursuant to the conditions of the grant, substantial construction was to be completed by February 10, 2013; however, the applicant represents that as of that date, substantial construction had not been completed; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that construction pursuant to the grant was delayed due to a lack of funding; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 10, 2009, so that as amended the resolution reads: “to grant an extension of time to complete construction for a term of three years from the date of this grant, to expire on October 28, 2017; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT substantial construction will be completed by October 28, 2017;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 110146486)

Adopted by the Board of Standards and Appeals, October 28, 2014.

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.

SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.

PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for adjourned hearing.

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545-56-BZ

APPLICANT – Eric Palatnik, P.C., for Williamsbridge Road Realty corporation, owner.

SUBJECT – Application June 12, 2014 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired October 19, 2012; Waiver of the Rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001-2007 Williamsbridge Road aka 1131 Neil Avenue, southeast corner of Williamsbridge Road and Neil Avenue, Block 4306, Lot 20, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrahi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

164-94-BZ

APPLICANT – Jeffrey Chester, Esq., for Tuckahoe Realty LLC., owner; LRHC Park Chester NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of physical culture establishment (*Lucille Roberts*), which expired on March 1, 2014. C1-2/R6 zoning district.

PREMISES AFFECTED – 84 Hugh Grant Circle, Cross Bronx Expressway Sr. South, Block 3794, Lot 109, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for continued hearing.

195-02-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for McDonald's Real Estate Company, owner; Lauren Enterprises, lessee.

SUBJECT – Application December 2, 2013 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility with a legalization of a small addition to the establishment, which expired on February 11, 2013; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, between Drew and Ruby Streets, Block 4471, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

178-03-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, Inc., owner.

SUBJECT – Application June 6, 2014 – Extension of Term of a Special Permit (§73-211) permitting the operation of an automotive service station (UG 16B) which expired on April 28, 2014. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 114-02 Van Wyck Expressway, south west corner of Linden Boulevard and Van Wyck Expressway, Block 11661, Lot 7, Borough of Queens.

COMMUNITY BOARD #10Q

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

318-06-BZ

APPLICANT – Eric Palatnik, LLP for Sun Company Inc. (R&M), owner.

SUBJECT – Application August 9, 2013 – 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 22, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on November 22, 2007; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, Noreast corner of Astoria Boulevard and 49th Street. Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

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76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (§73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

106-14-A

APPLICANT – Greenberg Traurig, LLP., for 84 William Street Property Owner LLC.

SUBJECT – Application May 22, 2014 – Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30 for the construction of residential apartments to an existing building. C5-5 (LM) zoning district.

PREMISES AFFECTED – 84 William Street, northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 1, 2014, acting on DOB Application No. 121184672 reads, in pertinent part:

1. Existing inner court for proposed UG 5 transient hotel does not comply with MDL 26.7;
2. Legally required windows for proposed UG 5 transient hotel open onto an inner court which does not comply with MDL 26.7, contrary to MDL 30; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from residential use (Use Group 2) to a transient hotel (Use Group 5), contrary to the court requirements of MDL §§ 26(7) and 30; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of the intersection of William Street and Maiden Lane, within a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the site has 70.08 feet of frontage along William Street, 77.52 feet of frontage along Maiden Lane, and 7,601 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 17-story mixed residential and commercial building (the “Building”) with approximately 115,255 sq. ft. of floor area (15.2 FAR) and 121 dwelling units; and

WHEREAS, the site includes a court (the “Court”) with an area of 930 sq. ft. and a minimum distance of 19’-0” from windows opening onto the court and the nearest building wall; and

WHEREAS, the applicant states that the Building was constructed as an office building in 1907 and converted to a multiple dwelling with ground floor retail in 2001 pursuant to Article I, Chapter 5 of the Zoning Resolution; the applicant notes that 75 dwelling units in the Building have legally-required windows opening onto the Court, in accordance with MDL § 277, which permits legally-required windows to open onto a court with a minimum area of 100 sq. ft. and a minimum window-to-window/wall distance of 15’-0”; and

WHEREAS, the applicant proposes to enlarge the Building by two stories and convert it to a transient hotel (Use Group 5) with 137 hotel rooms and Use Group 6 uses on the first story; the applicant proposes extensive alterations to the interior of the building in order to accommodate the proposed uses, including the construction of new mechanical spaces, however, the applicant does not propose changes to the dimensions of the Court or to the windows opening onto the Court; and

WHEREAS, the applicant states that 75 hotel rooms will have legally-required windows opening onto the Court; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered Class B multiple dwellings; therefore, the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 4(32), the Court is considered an “inner court;” and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; the applicant notes that the Zoning Resolution does not provide any standards for courts that serve transient hotels; and

WHEREAS, pursuant to MDL § 30, every room in a

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multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that the Court, which, as noted above, has an area of 930 sq. ft. and a minimum window-to-window/wall distance of 19'-0", does not satisfy the minimum requirements of MDL § 26(7); in addition, the applicant states that windows opening onto the Court cannot relied upon for light and ventilation, per MDL § 30; and

WHEREAS, accordingly, the applicant requests that the Board invoke its authority under MDL § 310 to permit the proposed conversion contrary to MDL §§ 26(7) and 30; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in 1907; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts and MDL § 30 mandates that a legally-required window open upon, among other things, a lawful court; therefore, the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the Board also observes that to the extent it permits a court at variance with the requirements of MDL § 26(7), such court is a "lawful court" upon which legally-required windows can open in accordance with MDL § 30; and

WHEREAS, turning to the findings under MDL § 310(2)(a), the applicant asserts that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, in support of this assertion, the applicant submitted a comparison between the proposal and the conversion of the Building to a transient hotel with a court that satisfies the minimum requirements of MDL §§ 26(7) and 30; and

WHEREAS, the applicant states that a complying court would require extensive demolition and exterior construction work around the court area to create the complying court and significant modifications to the layout of the hotel rooms, and would result in ten fewer rooms; and

WHEREAS, further, the applicant states that providing a complying court would cost approximately \$5,000,000 more

than the proposal and yield \$950,000 less in annual revenue; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) and 30 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states the primary intent of MDL §§ 26(7) and 30 is to ensure that rooms within multiple dwellings have adequate light and ventilation; and

WHEREAS, the applicant states that although the dimensions of the Court are deficient under the MDL, the Court is contiguous with the 550 sq.-ft. inner court of the building located on Block 68, Lot 11; thus, the total area of the combined courts is 1,480 sq. ft., which is 280 sq. ft. more than the maximum required (1,200 sq. ft.) under MDL § 26(7); and

WHEREAS, the applicant states, as noted above, that, currently, the Building is permitted to occupied for permanent residence purposes under MDL § 277 and the applicant asserts that it would be incongruous with the spirit and intent of the MDL to prevent transient use where permanent use is permitted; and

WHEREAS, likewise, the applicant states that visitors to the 75 proposed hotel rooms enjoy nearly the same amount of light and ventilation (19'-0" to the nearest window or wall) as visitors to hotels constructed with a rear yard depth of 20'-0" (the minimum required depth for a transient hotel under the Zoning Resolution); and

WHEREAS, the applicant also notes that because the Building will be used as a transient hotel, it will be used by visitors to New York City, who are unlikely to spend a substantial portion of daylight hours in their rooms; and

WHEREAS, at hearing, the Board inquired as to whether the hotel rooms would be provided with mechanical ventilation; and

WHEREAS, in response, the applicant confirmed that all 137 rooms would have mechanical ventilation in accordance with the applicable provisions of the relevant construction codes; and

WHEREAS, based on the above, the Board finds that the proposed modifications to the court requirements of MDL §§ 26(7) and 30 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested modification of the court requirements of MDL §§ 26(7) and 30 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Department of Buildings, dated May 1, 2014, is modified and

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that this application is granted, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received August 25, 2014"- (12) sheets and "October 3, 2014"- (5) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2014.

142-14-A

APPLICANT – Goldman Harris LLC., for 92 Henry Fulton LLC., owner.

SUBJECT – Application June 17, 2014 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C6-4 zoning district.

PREMISES AFFECTED –92 Fulton Street, south side of Fulton Street, between William Street to the West and Gold Street to the east, Block 77, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated June 19, 2014, acting on DOB Application No. 121185957, reads in pertinent part:

1. Proposed new building does not comply with bulk regulations resulting from the location of the street as per ZR 91-32 Setback regulations for Special Lower Manhattan District; for "Type 3" as defined on Map 2n Appendix A #street walls #, the required setbacks shall be measured from a line drawn at or parallel to the #street line# so that at least 70 percent of the aggregate width of street walls# of the building at the minimum base height are within such line and the #street line# (street widening line);
2. Proposed development which rests partially within the bed of the mapped street is contrary to GCL 35; and therefore must be referred to NYC BSA for approval with any related bulk

waivers pursuant to ZR72-01-(g); and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this is an application to allow the construction of 17-story mixed residential and commercial building, which will be partially located within the widening line of Fulton Street; and

WHEREAS, the subject site is located on the south side of Fulton Street between William Street to the west and Gold Street to the East within a C6-4 zoning district, within the Special Lower Manhattan District; and

WHEREAS, the site has 25.83 feet of frontage along Fulton Street and 2,189 sq. ft. of lot area, with about 42 percent of the lot area (933 sq. ft.) located within the widening area of Fulton Street; and

WHEREAS, the applicant states that, in connection with the proposed development, the site has been declared a single zoning lot with the following parcel 90 Fulton Street (Block 77, Tax Lot 23) which is improved with a remaining 5 story building ; and

WHEREAS, by letter dated July 1, 2014, the Fire Department states that it has reviewed the proposal and does not have any objections; and

WHEREAS, by letter dated July 11, 2014 , the Department of Environmental Protection ("DEP") states that: (1) there is an existing 12-inch diameter hydrant branch, 20-inch diameter water main in the bed of Fulton Street; (2) there is an existing 28-inch diameter combined sewer in the bed of Fulton Street between William Street and Gold Street; (3) Modified City Drainage Plan for Sewage District No. 22CL, dated May 3, 1928, calls for a future 3'-6" by 2'-4" combined sewer to be installed in Fulton Street between William Street and Gold Street; and

WHEREAS, initially, the applicant submitted a survey, which showed an existing 5'-6" by 2'-4" combined sewer in the bed of Fulton Street between William Street and Gold Street; and

WHEREAS, in response, DEP indicated that it requires the applicant to submit a survey/plan showing: (1) the existing 28-inch diameter combined sewer and additional 12-inch diameter hydrant branch in the bed of Fulton Street, fronting the above referenced property; and (2) the size of the 5'-6" by 2'-4" combined sewer must be verified; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey, and by letter dated July 29, 2014, DEP states that it has no objections to the proposal; and

WHEREAS, by correspondence dated July 31, 2014, the Department of Transportation ("DOT") states that: (1) according to the Manhattan Borough President's Topographical Bureau, Fulton Street from William Street to Gold Street is mapped at a width of 90 feet on the Final City

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Map; (2) the City does not have title to the southerly portion within Block 77; and (3) construction within the bed of Fulton Street is not presently included in DOT's Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL Section 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non-compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, in particular, the Board notes that, if the built width of Fulton Street (rather than its wider, mapped width) were used to measure the setbacks required under ZR § 91-32, such setbacks would comply; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the decision of the DOB, dated June 19, 2014, acting on DOB Application No. 121185957, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received October 8, 2014"- (1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related

to the relief granted.

Adopted by the Board of Standards and Appeals on October 28, 2014.

235-14-A

APPLICANT – Joseph Jabour, for Kevin & Roxie Voorhees, owners.

SUBJECT – Application September 30, 2014 – Section 36, Article 3 of the General City Law - NYC-HPD Build It Back in a private community known as Seagate which is a private unmapped street for a proposed single family home to replace the dwelling destroyed by Hurricane Sandy. R3-1 zoning district.

PREMISES AFFECTED – 4020 Atlantic Avenue, 200' to Beach 40th Street from east property line, Block 7042, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a single-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on October 21, 2014 after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Vice-Chair Hinkson; and

WHEREAS, this application is brought by an architect representing a homeowner in connection with the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, the subject property exists in a private community known as Seagate and is located on the tip of Coney Island, within an R3-zoning district; and

WHEREAS, the site has 5,000 sq. ft. of lot area and is currently vacant; it has 50 feet of frontage along Atlantic Avenue, an access road that does not appear on the City Map; and

WHEREAS, the applicant proposes to rebuild a single-family home with 2,417 sq. ft. of floor area (0.46 FAR); the applicant notes that the new home is being raised to accommodate the FEMA and DOB requirements for base flood elevation and is designed to comply with the relevant building codes and flood requirements; and

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated October 16, 2014, the Fire Department states that it has reviewed the proposal and has

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no objection, on condition that: (1) the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code; (2) interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code; (3) the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked "October 21, 2014"-one (1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code;

THAT interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code;

THAT the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2014.

61-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP., for Guido Passarelli, Trustee, owner.

SUBJECT – Application April 18, 2014 – Proposed construction of a two-story two family dwelling located within the bed of unmapped street, contrary to Article 3 Section 36 of the General City law. R3X (SRD) zoning district.

PREMISES AFFECTED – 11 Massachusetts Street South, southeast corner of intersection of Hylan Boulevard and Massachusetts Street, Block 7936, Lot 3(tentative), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner.

SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to

legalize a hotel (*Affinia Gardens Hotel*) under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Off-Calendar.

109-14-A

APPLICANT – Eric Palatnik, P.C., for Carlo Saccheri, owner.

SUBJECT – Application May 23, 2014 – Proposed two story commercial building which does not front on a legally, mapped street contrary to GCL Section 36. M1-1 SRD Zoning District.

PREMISES AFFECTED – 44 Marjorie Street, south of Sharrotts Road and East of Arthur Kill Road, Block 7328, Lot 645, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

343-12-BZ

APPLICANT – Akerman Senterfitt, LLP., for Ocean Ave Education Support, Inc., owner.

SUBJECT – Application December 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Brooklyn School for Medically Frail Children*) with dormitory facilities in a split zoning lot, contrary to lot coverage(§24-11), yard requirements (§24-382, §24-393, §24-33) and use regulations (§22-13). R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, between Dorchester Road and Ditmas Avenue, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for continued hearing.

176-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 2 residential in an existing 6-story building with a new penthouse addition, contrary to Section 42-10 of the zoning resolution. M1-5B zoning district.

PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, Borough of Manhattan.

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COMMUNITY BOARD # 2M

ACTION OF THE BOARD – Laid over to December 9, 2014, at 1:00 P.M., for continued hearing.

186-13-BZ

APPLICANT – Harold Weinberg, P.E., for Apostollis Goutsios, owner.

SUBJECT – Application June 21, 2013 – Special Permit (§73-622) for an enlargement to an existing single family home, contrary to side yard regulations (ZR 23-461) of the zoning resolution. R5 (BR) zoning district.

PREMISES AFFECTED – 117 Gelston Avenue, east side 125'-13'8" south of 90th Street and 92nd Street, Block 6089, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

8-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Oleg Saitskiy, owner.

SUBJECT – Application January 16, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141); side yards requirements (§23-461) and less than the rear yard requirement (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1824 East 22nd Street, west side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) to add a third and fourth floor to an existing school building (*Congregation Chasidei Belz Beth Malka*), contrary to floor area (§24-11) lot coverage, maximum wall height (§24-521), side yard (§24-35), front yard (§24-34) and rear yard (§24-361) regulations. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

26-14-BZ

APPLICANT – Francis R. Angelino, Esq., for The Hewitt School, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing community facility (*Hewitt School*), contrary to maximum building height (24-591); street wall height (§24-592); and rear yard requirements (§24-36). R8B zoning district.

PREMISES AFFECTED – 45 East 75th Street aka 42-76 East 76th Street, north side, East 75th Street through block to south side E 76th between Park & Madison Avenues, Block 1390, Lot(s) 28, 46, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

31-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Bnos Square of Williamsburg, owner.

SUBJECT – Application February 11, 2014 – Special Permit (§73-19) to allow a conversion of an existing Synagogue (*Bnos Square of Williamsburg*) building (Use Group 4 to (Use Group 3). M1-2 zoning district.

PREMISES AFFECTED – 165 Spencer Street, 32'6" Northerly from the corner of the northerly side of Willoughby Avenue and easterly side of Spencer Street, Block 1751, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

42-14-BZ

APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.

SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.

PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –
Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for decision, hearing closed.

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48-14-BZ

APPLICANT – Eric Palatnik, P.C., for Vlad Benjamin, owner.

SUBJECT – Application March 26, 2014 – Special Permit (§73-622) for the enlargement of an existing two story single family home, contrary to floor area, lot coverage and open space (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 174 Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot 196, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

56-14-BZ

APPLICANT – Walter Gorman, P.E.P.C., for Leemilts Petroleum Ink., owner; Capitol Petroleum Group, lessee.

SUBJECT – Application April 10, 2014 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses; Waiver of the Rules. C1-3/R3-A zoning district.

PREMISES AFFECTED – 161-51/6 Bailey Boulevard, northwest corner of Guy Brewer Boulevard, Block 12256, Lot 36, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

91-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

93-14-BZ

APPLICANT – Eric Palatnik, P.C., for 455 West 37 LLC., owner; MJM Boxing LLC., lessee.

SUBJECT – Application September 16, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Title Boxing Club*). R8A/C2-5 zoning district.

PREMISES AFFECTED – 455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for decision, hearing closed.

96-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.

SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district.

PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

100-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Madina Eco Friendly Ink., owner; Blink Macombs Road, Ink., lessee.

SUBJECT – Application May 8, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (PCE) (*Blink Fitness*) within a portions of a new two-story commercial building (currently under construction). C8-3 zoning district.

PREMISES AFFECTED – 1490 Macombs Road, east side of Macombs Road intersection Macombs Road, W 172nd Street and Inwood Avenue, Block 2865, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

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Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 18, 2014, at 10 A.M., for decision, hearing
closed.

114-14-BZ

APPLICANT – Eric Palatnik, P.C., for Boris Vaysurb,
owner.

SUBJECT – Application May 30, 2014 – Special Permit
(\$73-622) for enlargement of an existing two story single
family dwelling contrary to floor area ratio, open space and
lot coverage (ZR 23-141); side yard (ZR 23-461) and less
than the rear yard requirements (ZR 23-47). R4 zoning
district.

PREMISES AFFECTED – 2442 East 14th Street, between
Avenue X and Avenue Y, Block 7415, Lot 24, Borough of
Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December
9, 2014, at 10 A.M., for continued hearing.

150-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for
Gotham Broad LIC, owner; BFX 30 Broad Street LLC dba
BFX Studio, lessee.

SUBJECT – Application June 25, 2014 – Special Permit
(\$73-36) to allow the operation of a physical culture
establishment (*BFX Studio*) in portions of the second floor
and second floor mezzanine with an entrance at the ground
level. C5-5 zoning district.

PREMISES AFFECTED – 30 Broad Street, between
Exchange Place and Beaver Street, Block 24, Lot 29,
Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

ACTION OF THE BOARD – Laid over to
November 18, 2014, at 10 A.M., for decision, hearing
closed.

Ryan Singer, Executive Director

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CORRECTION

This resolution adopted on October 21, 2014, under Calendar No. 283-13-BZ and printed in Volume 99, Bulletin Nos. 42-43, is hereby corrected to read as follows:

283-13-BZ

CEQR No. 14-BSA-053K

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 30, 2013, acting on DOB Application No. 320734577, reads, in pertinent part:

ZR 42-10 – Physical culture or health establishment is not permitted as of right in M1-1 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-1 zoning district, the operation of a physical culture establishment (“PCE”) on the first story and mezzanine of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with continued hearings on August 19, 2014 and September 23, 2014, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a triangular lot located at the northeast corner of the intersection of 20th Avenue and Dahill Road, within an M1-1 zoning district; and

WHEREAS, the site has approximately 150 feet of frontage along 20th Avenue, approximately 170 feet of frontage along Dahill Road, and 11,376 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with 16,643 sq. ft. of floor area (1.46 FAR); and

WHEREAS, the proposed PCE will occupy the entire

building and be operated as NYC Fight Club; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 6:00 a.m. to 11:30 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to remove graffiti from the exterior of the building and to clarify the parking requirements of the site and anticipated parking needs of the PCE; and

WHEREAS, as to the graffiti, the applicant submitted photos depicting the removal of the graffiti; and

WHEREAS, as to parking, the applicant obtained a determination from DOB that parking is not required for the PCE; in addition, the applicant represents that: (1) only ten percent of the patrons regularly visiting the PCE will arrive by personal car and that 90 percent will walk or utilize a form of public transportation; (2) public transportation in the vicinity is adequate, in that the F train and the No. 11 bus are within 200 feet of the site and two other buses are within two avenues of 20th Avenue; and (3) on-street parking and local off-street parking facilities are more than adequate to handle the limited auto traffic anticipated; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-053K, dated September 30, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and

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Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

Bulletin No. 44, Vol. 99, dated November 5, 2014.

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-1 zoning district, the operation of a PCE on the first story and mezzanine of a one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 10, 2014”-(10) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 21, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT since there are no residential uses in the subject building and there are no adjacent residential uses, sound attenuation measures are not necessary;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 21, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 21, 2015” now reads: “October 21, 2018”. Corrected in

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CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 50-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

50-14-BZ

CEQR #14-BSA-131K

APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.
SUBJECT – Application April 1, 2014 – Re-adoption of September 16, 2014 approval with required LPC approval. Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.
PREMISES AFFECTED – 825 Manhattan Avenue aka 181 Calyer Street, north side of Calyer Street, 25’ west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2014, acting on DOB Application No. 320903572, reads, in pertinent part:

Proposed physical culture or health establishment is not a use permitted as of right; contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3A zoning district, within the Greenpoint Historic District, the operation of a physical culture establishment (“PCE”) in the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in the *City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a flag lot with 25 feet of frontage along Manhattan Avenue and 79 feet of frontage along Calyer Street; and

WHEREAS, the site has 10,400 sq. ft. of lot area and is located within a C4-3A zoning district, within the Greenpoint Historic District; and

WHEREAS, the site is occupied by a one-story commercial building with 10,400 sq. ft. of floor area (1.0

FAR); and

WHEREAS, the proposed PCE will occupy the entire building, including 10,400 sq. ft. of floor space in the cellar, for a total PCE size of 20,800 sq. ft.; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated September 24, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA131K dated April 1, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3A zoning district, within the Greenpoint Historic District, the operation of a PCE in the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 16, 2014” (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 7, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

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THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 7, 2015” now reads: “October 7, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 21, 2014, under Calendar No. 53-14-BZ and printed in Volume 99, Bulletin Nos. 42-43, is hereby corrected to read as follows:

53-14-BZ

CEQR #14-BSA-134M

APPLICANT – Evolution Muay Thai LLC, for 12 West 27 Land, L.P., owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-36) to legalize a physical culture establishment (*Evolution Muay Thai*). M1-6 zoning district.

PREMISES AFFECTED – 12 West 27th Street, 2nd floor, between Broadway and 6th Avenue, Block 828, Lot 56, Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 5, 2014, acting on DOB Application No. 121094804, reads, in pertinent part:

Physical culture establishment is not permitted as of right in M1-6 zoning district and is contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, within the Madison Square North Historic District, the legalization of a physical culture establishment (“PCE”) operating on the second story of an 18-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in the *City Record*, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 27th Street, between Avenue of the Americas and Broadway, within the Madison Square North Historic District; and

WHEREAS, the site has 50 feet of frontage along West 27th Street and 4,938 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 18-story mixed residential and commercial building with approximately 85,076 sq. ft. of floor area (17.23 FAR); and

WHEREAS, the PCE occupies 4,714 sq. ft. of floor area

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on the second story and is operated as Evolution Muay Thai; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 12:00 p.m. to 9:00 p.m., and Saturday, from 12:00 p.m. to 5:00 p.m., and Sunday, from 12:00 p.m. to 3:00 p.m.; and\

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated March 19, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board noted that it had received complaint regarding odors emanating from the PCE; and

WHEREAS, in response, the applicant stated that it also received the complaint and has installed a new ventilation system; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit and to ensure that the continued operation of the PCE does not negatively impact the building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA134M dated July 8, 2014; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air

Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, within the Madison Square North Historic District, the legalization of a PCE operating on the second story of an 18-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 9, 2014"-(2) sheets; *on further condition*:

THAT the term of the PCE grant will expire on October 21, 2019;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT workout padding in the PCE space will be cleaned and sanitized on a regular basis;

THAT charcoal filters will be installed in the PCE space to ensure that odors from the PCE do not migrate into offices throughout the building;

THAT specific sound attenuation measures are not necessary since there are no residential uses above or adjacent to the PCE space. The floor of the PCE is eighteen inch concrete slab with 1½ inch foam on top of the slab which will act as a sound buffer;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 21, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not

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related to the relief granted.

Adopted by the Board of Standards and Appeals, October 21, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 21, 2015” now reads: “October 21, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 21, 2014, under Calendar No. 1053-14-BZ and printed in Volume 99, Bulletin Nos. 42-43, is hereby corrected to read as follows:

105-14-BZ

APPLICANT – Lewis E. Garfinkel, for Caren May, owner.
SUBJECT – Application May 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1224 East 27th Street, west side of East 27th Street, 175’ south from Avenue L, Block 7644, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated May 19, 2014, acting on DOB Application No. 320915266, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio exceeds the permitted 50 percent;
 2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio is less than the required 150 percent;
 3. Plans are contrary to ZR 23-461(a) in that the side yard is less than the required 5’-0”;
 4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;
- and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 21, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

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WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the site has 25 feet of frontage along East 28th Street and 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,637 sq. ft. of floor area (0.65 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to convert the building to a single-family home and increase its floor area from 1,637 sq. ft. (0.65 FAR) to 2,187 sq. ft. (0.88 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 68 percent to 55 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard widths of 3'-0" and 5'-8"; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 37'-8" to 20'-0"; a rear yard with a minimum depth of 30'-0" is required; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant asserts that the proposed lot 0.88 FAR is consistent with the bulk in the surrounding area; in addition, the applicant states that the street wall location and building height are in keeping with the surrounding buildings and submitted a streetscape in support of this assertion; and

WHEREAS, at hearing, the Board directed the applicant to clarify the portion of the proposed attic that constitutes floor area and to provide further details regarding the adjacent sites; and

WHEREAS, in response, the applicant submitted amended plans, which depict the requested information; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-

141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 7, 2014"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,187 sq. ft. (0.88 FAR), a minimum open space ratio of 55 percent, side yards with minimum widths of 3'-0" and 5'-8", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 21, 2018; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 21, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read "October 21, 2016" now reads: "October 21, 2018". Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

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CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 130-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

130-14-BZ

CEQR #14-BSA-172M

APPLICANT – Francis R. Angelino, Esq., 605 fifth Property Owner, LLC, owner; Chiva-Som Spa, lessee.

SUBJECT – Application June 11, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Chiva-Som Spa*) will be on the entire fifth floor of a six-story commercial building, located within a C5-3 zoning district.

PREMISES AFFECTED – 605 Fifth Avenue, east Side Fifth Avenue between East 48th & 49th Streets, Block 1284, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 20, 2014, acting on DOB Application No. 121983185, reads, in pertinent part:

ZR 32-10 – Proposed physical culture establishment in C5-3 is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, within the Special Midtown District, the operation of a physical culture establishment (“PCE”) on the fifth story of an existing six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in the *City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice-Chair Hinkson; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Fifth Avenue, between West 48th Street and West 49th Street, within a C5-3 zoning district, within the Special Midtown District; and

WHEREAS, the site has approximately 25 feet of frontage along Fifth Avenue and 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a six-story commercial building with approximately 13,750 sq. ft. of floor area (3.6 FAR); and

WHEREAS, the proposed PCE will occupy 1,996 sq. ft. of floor area on the fifth story of the building; and

WHEREAS, the PCE will be operated as Chiva-Som Spa; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 10:00 a.m. to 8:00 p.m. and Sunday, from 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-172M, dated August 4, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-3 zoning district, within the Special Midtown District, the operation of a PCE on the fifth story of an existing six-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 4, 2014”- two (2) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 7, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all massages must be performed by New York State licensed massage therapists;

THAT accessibility compliance will be as reviewed and approved by DOB;

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THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans; THAT the above conditions will appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 7, 2015” now reads: “October 7, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 144-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

144-14-BZ

CEQR #15-BSA-013M

APPLICANT – Sheldon Lobel, P.C., for Park 121 Realty LLC., owner; Leake & Watts Services Inc. Children's Learning Center, lessee.

SUBJECT – Application June 20, 2014 – Special Permit (§73-19) to allow for a Use Group 3 special education preschool on the second floor of an existing building. M1-4 district.

PREMISES AFFECTED – 1751 Park Avenue, east side of Park Avenue between East 122nd Street and East 121 Street, Block 1770, Lot(s) 72, 4, 3, 2, 1, 101, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 13, 2014, acting on DOB Application No. 104138443, reads in pertinent part:

Proposed Use Group 3 school is not permitted in an M1-4 zoning district pursuant to ZR Section 42-10; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-4 zoning district, the conversion of the second story of an existing four-story mixed community facility and commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in the *City Record*, and reopened on September 23, 2014, and then to decision on October 7, 2014, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, this application is brought on behalf of the Children’s Learning Center (the “School”), which operates a pre-school program for children with certain disabilities, including disorders on the autism spectrum; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Park Avenue and 121st Street, within an M1-4 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 1, 2, 4, 72, and 101; it has 9,512 sq. ft. of lot area,

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127 feet of frontage along Park Avenue, and 75 feet of frontage along 121st Street; and

WHEREAS, the site is occupied by a four-story mixed community facility and commercial building with 38,050 sq. ft. of floor area (4.0 FAR); the applicant represents that a bakery occupies the cellar and first story of the building and a non-profit institution without sleeping accommodations occupies the third and fourth stories; the second story is vacant; and

WHEREAS, the applicant proposes to renovate the second story of the building (approximately 7,649 sq. ft. of floor area (0.8 FAR)) to accommodate the School, which is classified as Use Group 3 daycare; and

WHEREAS, the applicant states that, under the proposal, the second story will serve an estimated 90 children ranging in age from three to five years and approximately 50 employees, and provide related sanitary facilities and administrative offices; and

WHEREAS, in particular, the applicant proposes a total of ten classrooms, a sensory gymnasium, two therapy rooms (speech and occupational), three administrative offices, two small group rooms, and restrooms; and

WHEREAS, the applicant represents that the School seeks to relocate from its current location at 310 West 103rd Street, which is inadequate; and

WHEREAS, the applicant states that the majority of its students live in Manhattan and the Bronx; and

WHEREAS, the applicant notes that the site is subject to a City Planning Commission special permit pursuant to ZR § 74-291, which authorizes occupancy of the third and fourth stories of the building by the Bailey House, a non-profit institution without sleeping accommodations (Use Group 4A); the Bailey House provides certain social services to men, women, and children living with HIV/AIDS, including health care, counseling, support groups, substance abuse treatment, education, job training, and employment assistance; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-4 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that it conducted a search of nearby residence and commercial districts with the following site criteria: (1) space within an existing building to minimize development costs; (2) a landlord with a willingness to renovate the space; (3) a space with access and lighting sufficient to meet the daycare licensing standards; and (4) proximity to recreation (parks and playgrounds) and public transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of five buildings within the area and on sites where Use Group 3 is permitted as-of-right:

3560 Broadway; 51-55 East 125th Street; 461 West 126th Street; 4280-4298 Broadway, 2 Bennett Avenue; and 5030 Broadway; and

WHEREAS, the applicant represents that each building was unsuitable for the School, either because the rent was too expensive, the space could not be configured to comply with daycare licensing standards, and/or the landlord would not renovate the space; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant states that the site is adjacent to an R8 zoning district, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that an ambient noise survey was initially conducted at the site in connection with the Bailey House special permit application discussed above; the survey indicated that the predominant noise sources in the area would be vehicular and train traffic and that, at the time of monitoring, interior noise levels were well in excess of what would be considered acceptable; however, the survey was conducted before the interior finishes of the Bailey House were installed; thus, certain assumptions were made about the anticipated attenuation of the finished space and it was determined that noise levels for the Bailey House would be acceptable; and

WHEREAS, the applicant states that the School's proposed space on the second story is in the midst of renovation – interior walls and partitions are in place and a drop ceiling has been partially installed but the floor remains a bare concrete slab; under these conditions, on September 18, 2014, a noise survey was conducted; the survey reflected interior noise levels at 45.9 dB(A); and

WHEREAS, the applicant notes that although 45.9 dB(A) is nearly one dB(A) above the 45 dB(A) that is considered acceptable according to the CEQR Technical Manual, its consultant represents that the installation of flooring, carpeting, and furniture will bring the noise levels within 45 dB(A); and

WHEREAS, in addition, the applicant states that the Department of Environmental Protection (“DEP”) reviewed the noise consultant's analyses and determined that noise levels would be acceptable within the School; and

WHEREAS, at hearing, the Board expressed concerns

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regarding the proposed lobby of the building, which was proposed to be shared by the School and the Bailey House; and

WHEREAS, in response, the applicant revised the proposal to provide a separate building entrance and a dedicated elevator for the School; the applicant also provided detailed egress and occupant load calculations to demonstrate that both the School and the Bailey House will have compliant means of egress from their respective spaces; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's use will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-4 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant notes that section of Park Avenue fronting the site has two-way, single lane traffic separated by the elevated tracks of the Metro North Railroad line; and

WHEREAS, the applicant states that during the morning drop-off period (8:00 a.m. to 9:00 a.m.), an average of 259 vehicles per hour traverse Park Avenue and that during the afternoon pick-up, an average of 429 vehicles per hour traverse Park Avenue; thus, the applicant asserts that the vehicular traffic is moderate; and

WHEREAS, the applicant represents that the School's students will arrive by private mini-buses, with capacities of 15 students-per-bus, necessitating between five and six bus trips on a typical morning or afternoon (depending on how many students enroll in the full- or half-day programs); teachers and staff will accompany the students from the buses directly into the lobby of the building; and

WHEREAS, the applicant notes that the mini-buses will not be able to simultaneously queue in front of the site along Park Avenue to load and offload students; accordingly, buses will load and unload one at-a-time and queue on neighboring side streets; and

WHEREAS, the applicant states that it will apply to the Department of Transportation ("DOT") for a change in curbside parking regulations in front of the site along Park Avenue to establish a School No Standing Zone for Monday through Friday, from 8:00 a.m. to 4:00 p.m.; and

WHEREAS, thus, the applicant states that, based on its assessment of existing traffic conditions in the vicinity, the School can operate safely without significant impacts; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the

evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 15-BSA-013M, dated June 18, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow, on a site in an M1-4 zoning district, the conversion of the second story of an existing four-story mixed community facility and commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 6, 2014" – twelve (12) sheets; and *on further condition*:

THAT a dedicated entrance and a dedicated elevator will be maintained for the School at all times;

THAT DOB will review and approve the egress and occupant load calculations for the School;

THAT any change in the operator of the school requires review and approval by the Board;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 7, 2015” now reads: “October 7, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 206-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

206-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 910 Lanark Road, clustered in the Broad Channel neighborhoods, Edgemere / Somerville and Rockaway Park neighborhoods of Community District 14. Block 15500, Lot 602, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the east side of Lanark Road, approximately 200 feet south of East Ninth Road, within an R3-2 zoning district; and

WHEREAS, the site has 37 feet of frontage along Lanark Road and 2,775 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged

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two-story, single-family home with 450 sq. ft. of floor area (0.16 FAR); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 868 sq. ft. of floor area (0.31 FAR); and

WHEREAS, the applicant states that the proposed building complies in all respects with the bulk regulations of the subject R3-2 district except that a rear yard depth of 21'-7" is proposed (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and

WHEREAS, accordingly, the applicant seeks a special permit to allow the proposed rear yard; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a wider side yards, and a deeper front yard than the existing building; therefore, the proposal will provide significantly more open space on the site than is currently provided; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.31 FAR) and a minimum rear yard depth of 21'-7", as illustration the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by

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October 7, 2018;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 7, 2015”...now reads: “October 7, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 207-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

207-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 41 West 12th Road, clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and Rockaway Park Neighborhoods of Community District 14. Block 15316, Lot 64. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for a vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the north side of West 12th Road, between Cross Bay Boulevard and Jamaica Bay, within an R3-2 zoning district; and

WHEREAS, the site has 24.5 feet of frontage along West 12th Road and 2,450 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 700 sq. ft. of floor area (0.29 FAR); the existing home has the following non-compliances: a front yard depth of 8'-0" (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); and side yards with widths of 3'-3" (western side yard) and 0'-6" (eastern side yard) (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each, per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 868 sq. ft. of floor area (0.36 FAR); the new building will provide a front yard depth of 20'-0", a rear yard depth of 49'-0", a western side yard width of 5'-2½", and eastern side yard width of 4'-6"; and

WHEREAS, the applicant represents that the buildings directly east and west of the proposed building are built to the sites' common side lot lines; as such, the building directly east of the site will be located 4'-6" from the proposed building and the building directly west of the site will be located 5'-2½" from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant the applicant seeks a special permit to allow construction of the new building with a distance of less than 8'-0" from the buildings directly west and east of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character

of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 49'-0" where a depth of only 30'-0" is required, and increase in front yard depth from a non-complying 8'-0" to a complying 20'-0"; in addition, it increases one side yard width by 1'-11" and increases the other side yard width by 4'-0"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards

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and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-2 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.36 FAR) and side yards with minimum widths of 5'-2½" and 4'-6", as illustrated on the BSA- approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read "October 7, 2015" now reads: "October 7, 2018". Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 209-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

209-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 592 Beach 43rd Street, clustered in the Broad Channel neighborhoods, Edgemere / Somerville, and Rockaway Park neighborhoods of Community District 14 in Queens. Block 15961, Lot 102. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the east side of Beach 43rd Street, between Delmore Court and an inlet of Jamaica Bay, within an R4-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Beach 43rd Street and 1,900 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,504 sq. ft. of floor area (0.75 FAR); the existing home has the following non-compliances: a front yard depth of 8'-6" (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); one side yard with width of 3'-9" along the northern boundary of the site (the requirement is two side yards with minimum widths of 4'-0", per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and a rear yard depth of 8'-0" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,400 sq. ft. of floor area (0.70 FAR); the new building will provide a front yard depth of 18'-9", a northern side yard width of 3'-0", a southern side yard width of 3'-0", and a rear yard depth of 26'-3"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with rear yard depth of 26'-3" and a northern side yard width of 3'-0"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the rear and side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior

floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear and side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint and a complying front yard depth; in addition, it increases the southern side yard by 3'-0" and increases the rear yard depth by 18'-3"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-47 and 23-461; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,400 sq. ft. of floor area (0.70 FAR), side yards with minimum widths of 3'-0", and a rear yard depth of 26'-3", as illustrated on the BSA-approved plans;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 7, 2015” now reads: “October 7, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 210-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

210-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.R4A zoning district.

PREMISES AFFECTED – 69-52 Thursby Avenue, clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and rockaway Park neighborhoods of Community District 14 in Queens. Block 16050, Lot 63. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R4A zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the northeast corner of the intersection of Beach 72nd Street and Thursby Avenue, within an R4A zoning district; and

WHEREAS, the site has 100 feet of frontage along

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Beach 72nd Street, 22.5 feet of frontage along Thursby Avenue, and 2,250 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 867 sq. ft. of floor area (0.39 FAR); the existing home has the following non-compliances: a front yard depth of 5'-10" along Thursby Avenue (a minimum front yard depth of 18'-0" is required along Thursby Avenue, per ZR § 23-45); a front yard depth of 4'-0" along Beach 72nd Street (a minimum front yard depth of 10'-0" is required along Beach 72nd Street, per ZR § 23-45) and no side yard (the requirement is one side yard with a minimum width of 2'-0", per ZR § 23-461 and non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 868 sq. ft. of floor area (0.39 FAR); the new building will provide a front yard depth of 18'-9" along Thursby Avenue, a front yard depth of 4'-3" along Beach 72nd Street, a rear yard depth of 45'-7", and one side yard width of 4'-3"; and

WHEREAS, the applicant represents that the building directly east of the proposed building is built to the sites' common side lot line; as such, the building directly east of the site will be located 4'-3" from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a distance of less than 8'-0" from the building directly east of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant

construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint and a rear yard depth of 45'-7" where a depth of only 20'-0" is required; in addition, the proposal reflects increases in front yard depth from 4'-0" to 4'-3" and 5'-10" to 18'-9" and an increase in side yard depth from 0'-0" to 4'-3"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards

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and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R4A zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received September 26, 2014”- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 868 sq. ft. of floor area (0.39 FAR), front yards with minimum depths of 4’-3” and 18’-9”, a minimum rear depth of 45’-7”, and one side yard with a minimum width of 4’-3”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read “October 7, 2015” now reads: “October 7, 2018”. Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 211-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

211-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 3-41 Beach 87th Street, clustered in the Broad Channel neighborhoods, Edgemere/Somerville, and rockaway Park neighborhoods of Community District 14 in Queens. Block 16119, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for a vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, the owner of the adjacent site testified in opposition to application, citing concerns regarding the proposed height and front yard depth of the building; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Beach 87th Street between Dormans Court and the

MINUTES

Rockaway Freeway, within an R4-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Beach 87th Street and 2,268 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two flood-damaged, one-story, single-family homes with a combined 1,800 sq. ft. of floor area (0.79 FAR); the existing site has the following yard non-compliances: a front yard depth of 6'-4" (a minimum front yard depth of 10'-0" is required, per ZR § 23-45); and side yards with widths of 3'-0" (northern side yard) and 1'-2" (southern side yard) (the requirement is two side yards with minimum widths of 4'-0", per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,400 sq. ft. of floor area (0.62 FAR); the new building will provide a front yard depth of 10'-0", a rear yard depth of 43'-9", a northern side yard width of 3'-0", and southern side yard width of 3'-0"; and

WHEREAS, the Board notes that, initially, the applicant proposed a front yard depth of 18'-0"; however, in response to concerns raised by the owner of the adjacent site, the proposal was amended to reflect a front yard depth of 10'-0"; and

WHEREAS, the applicant represents that the building directly north of the site is located 1'-6" from the sites' common side lot line and that the building directly south of the site is located 1'-10" from the sites' common side lot line; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR § 23-461, side yards must have a minimum width of 4'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a distance of less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such

modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 43'-9" where a depth of 30'-0" is required, and increase in front yard depth from a non-complying 6'-4" to a complying 10'-0"; in addition, it increases the width of one side yard by 1'-10"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in

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consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R4-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for a vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,400 sq. ft. of floor area (0.62 FAR) and side yards with minimum widths of 3'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read "October 7, 2015" now reads: "October 7, 2018". Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 212-14-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

212-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5D zoning district.

PREMISES AFFECTED – 209A Beach 100th Street, clustered in Broad Channel neighborhoods, Edgemere / Somerville, and Rockaway Park neighborhoods of Community District 14 Queens. Block 16156, Lot 94. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R5D (C1-3) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of Beach 100th Street between the Rockaway Freeway and Rockaway Beach Boulevard, within an R5D (C1-3) zoning district; and

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WHEREAS, the site has 52 feet of frontage along Beach 100th Street and 1,048 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 429 sq. ft. of floor area (0.41 FAR); the existing site has the following yard non-compliances: a front yard depth of 2'-6" (a minimum front yard depth of 5'-0" is required, per ZR § 23-45); side yards with widths of 1'-0" (southern side yard) and 16'-8" (northern side yard) (the requirement is one side yard with a minimum width of 8'-0", per ZR § 23-461; however, non-complying side yards may be reconstructed, per ZR § 54-41); and a rear yard depth of 5'-8" (a minimum rear yard depth of 10'-0" is required); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 868 sq. ft. of floor area (0.83 FAR), a front yard with a depth of 3'-0", side yards with widths of 3'-0" (southern side yard) and 16'-8" (northern side yard), and a rear yard with a depth of 3'-11½"; and

WHEREAS, accordingly, the applicant seeks a special permit to allow the proposed front and rear yards; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are

12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a lot coverage of 41 percent, which is identical to the existing home at the site and 20 percent less than is permitted as-of-right in the subject R5D (C1-3) district; in addition, the front yard depth is increased by 0'-6", and the southern side yard is increase by 2'-0"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R5D (C1-3) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front and rear yards, contrary to ZR §§ 23-45 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 26, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the

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building: a maximum floor area of 868 sq. ft. of floor area (0.83 FAR), a maximum lot coverage of 41 percent, a minimum front yard depth of 3'-0", and a minimum rear yard depth of 3'-11½", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval is limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by October 7, 2018;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to change the signed off date in part of the conditions which read "*October 7, 2015*" now reads: "*October 7, 2018*". Corrected in Bulletin No. 44, Vol. 99, dated November 5, 2014.

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268-14-BZ

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269-14-BZ

89-44 Metropolitan Avenue, Southeast corner of Metropolitan Avenue and Aubrey Avenue, Block 3872, Lot(s) 33, Borough of **Queens, Community Board: 5**. Special Permit §73-36) to allow the physical culture establishment (SPA) on the first floor level of an existing commercial building in a C2-2 in R4 zoning district. C2-2 R4-/R4-1 district.

270-14-BZ

203 East 92nd Street, North side of East 92nd Street, 80 ft. east of intersection with 3rd Avenue, Block 1538, Lot(s) 10, Borough of **Manhattan, Community Board: 8**. Special Permit 73-36" to allow the physical culture establishment (PCE) within portions of a new mixed use building, located with an C4-6 zoning district. C4-6 district.

271-14-A

15 Patricia Court, Bound by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 6680, Lot(s) 10, Borough of **Staten Island, Community Board: 3**. General City Law 36 Waiver to permit the proposed development consisting of seven one family homes and one two family home, contrary Article 3 Section 36 of the General City Law. R3X district.

272-14-A

25 Patricia Court, bounded by Seguine Avenue, MacGregor Avenue, Herg3ert Street, Holton Avenue, Block 6680, Lot(s) 9, Borough of **Staten Island, Community Board: 3**. General City Law 36 Waiver to permit the proposed which consist of seven homes one family and one two family home. Contrary to Section 3 Article 3 of the General Citify Law. R3X district.

273-14-A

26 Patricia Court, bounded by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 6680, Lot(s) 6, Borough of **Queens, Community Board: 3**. General City Law 36 Waiver to permit the proposed development which h consist of seven one family homes and one two family homes. Contrary to Section 36 Article 3 of the General City Law. R3X district.

274-14-A

26 Patricia Court, bounded by Seguine Avenue MacGregor Avenue Herbert Street Holton Avenue, Block 6680, Lot(s) 6, Borough of **Staten Island, Community Board: 3**. General City Law 36 Waiver to permit the proposed development which consist of seven one family homes and one two family home, contrary to Section 36 Article 3 of the General City Law. RX3 district.

275-14-A

35 Patricia Court, bounded by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 6680, Lot(s) 8, Borough of **Staten Island, Community Board: 3**. General City Law 36 Waiver to permit the proposed development which consist of seven one family homes and one two family home, contrary to Section 36, Article 3 of the General City Law. R3X district.

276-14-A

36 Patricia Court, Bounded by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 6680, Lot(s) 7, Borough of **Staten Island, Community Board: 3**. GCL 36: to permit the proposed development which consist of seven one family homes and one two family homes, contrary Section 36 Article 3 of the General City Law. R3X district.

277-14-A

36 Patricia Court, Bounded by Segine Avenue MacGregor Avenue Herbert Street, Holton Avenue, Block 6680, Lot(s) 7, Borough of **Staten Island, Community Board: 3**. GCL36 to permit the proposed development which consist of seven one family homes and one two family home, contrary to Section 36 Article 3 of the General City Law. R3X district.

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278-14-A

45 Patricia Court, bounded by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 6680, Lot(s) 24, Borough of **Staten Island, Community Board: 3**. GCL 36 to permit the proposed development which consist of seven one family homes and one two family home, contrary to Section 36, Article 3 of the General City Law. R3X district.

279-14-A

46 Patricia Court, Bounded by Seguine Avenue, MacGregor Avenue, Herbert Street, Hilton Avenue, Block 6680, Lot(s) 25, Borough of **Staten Island, Community Board: 3**. GCL 36 to permit the proposed development which consist of seven one family homes and one two family home, contrary to Section 36 Article 3 of the General City Law. R3X district.

280-14-A

46 Patricia Court/garage, Bounded by Seguine avenue, MacGregor avenue Herbert Street, Holton Avenue, Block 6680, Lot(s) 25, Borough of **Staten Island, Community Board: 3**. GCL 36 to permit the proposed development which consist of seven one family homes and one two family home, contrary to Section 36, Article 3 of the General City Law. R3X district.

281-14-A

26 Herbert Court, Bounded by Seguine Avenue, Herbert Street, Holton Avenue, Block 6680, Lot(s) 23, Borough of **Staten Island, Community Board: 3**. GCL 36: to permit the proposed development which consist of seven on e family homes and one two family home, contrary to Section 36 Article 3 of the General City Law. R3X district.

282-14-A

26 Herbert Court/garage, Bounded by Seguine Avenue, MacGregor Avenue, Herbert Street, Holton Street, Block 6680, Lot(s) 23, Borough of **Staten Island, Community Board: 3**. GCL 36, to permit the proposed development which consist of seven one family homes and two family home, contrary to Section 36, Article 3 of the General City Law. R3X district.

283-14-BZ

3255 Bedford Avenue, Eastside Bedford Avenue between Avenue" K" and Avenue" L", Block 7625, Lot(s) 31, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-622) to permit an enlargement of an existing 2 family residents and conversion to a single family occupancy, located within an R2 zoning district. R2 district.

284-14-BZ

267 Pacific Street, between Smith street and Boerum Place on the north side of Pacific Street, Block 181, Lot(s) 31, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to allow for the operation of a physical culture establishment on the first floor of the existing building, Located within an R6-2 with an C2-4 Overlay. R6-A/C24 Overla district.

285-14-BZ

84 McLaughlin Street, Between Olympia Boulevard and Agnes Place, Block 0341, Lot(s) 20049, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

286-14-BZ

20 Orlando Street, Between Olympia Boulevard and Lansing Street, Block 0340, Lot(s) 30016, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

287-14-BZ

138 Roma Avenue, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 80025, Borough of **Staten Island, Community Board: 3**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

288-14-BZ

131 Cedar Grove Avenue, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 70002, Borough of **Staten Island, Community Board: 3**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

289-14-BZ

22-32/36 31st Street, Located on the west side of 31st Street, Block 844, Lot(s) 49,149.119, Borough of **Queens, Community Board: 1**. Special Permit (§73-42) to extend the conforming Use Group 6 restaurant use located partially within a C4-2A zoning district into the adjacent R5B zoning district. C4-2A &R5B district.

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290-14-BZ

2311 Quentin Road, North side of Quentin road between East 23rd Street and East 24th Street, Block 6786, Lot(s) 42, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to request a special permit to allow the enlargement of an existing single family residence located in a residential district, located within an R3-2 zoning district. R3-2 district.

291-14-BZ

19 Milbank Road, Between Roma Avenue and Cedar Grove Avenue, Block 0409, Lot(s) 10027, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

292-14-A

19 Milbank Road, Between Roma Avenue, and Cedar Grove Avenue, Block 0409, Lot(s) 10027, Borough of **Staten Island, Community Board: 2**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3X district.

293-14-BZ

23 Neutral, Between Roma Avenue and Cedar Grove Avenue, Block 0409, Lot(s) 20026, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

294-14-A

23 Neutral Avenue, Between Roma Avenue and Cedar Grove Avenue, Block 0409, Lot(s) 20026, Borough of **Staten Island, Community Board: 2**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. HPD/BIB Project (GCL 36) waiver for the proper R3X district.

295-14-BZ

58 Seafoam Avenue, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 10068, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes

damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

296-14-A

58 Seafoam Street, Between Roma and Cedar Grove Avenue, Block 0408, Lot(s) 10068, Borough of **Staten Island, Community Board: 2**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. 23X district.

297-14-BZ

6 Topping Street, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 50042, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

298-14-A

6 Topping Street, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 50042, Borough of **Staten Island, Community Board: 2**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3X district.

299-14-BZ

28 Topping Street, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 50043, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

300-14-A

28 Topping Street, Between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot(s) 50043, Borough of **Staten Island, Community Board: 2**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3X district.

301-14-BZY

232 Skillman Street, East side of Skillman Street 108 feet north of Dekalb Avenue, Block 1927, Lot(s) 60, Borough of **Brooklyn, Community Board: 3**. Minor Development 11-331: to extend the time to get a certificate of occupancy and

DOCKETS

to complete construction. R6B district.

302-14-BZ

45-04 Francis Lewis Boulevard, Southeast corner of intersection of Francis Lewis Boulevard and 45th Avenue, Block 5538, Lot(s) 30, Borough of **Queens, Community Board: 11**. Special Permit (§73-125) to allow proposed ambulatory diagnostic or treatment health care facility in excess of 1500 sq. ft. in an R3X zoning district within a two-story mixed use building. R3X district.

303-14-BZ

1032 Olympia Boulevard, Between Mapleton Avenue and Hempstead Avenue, Block 0380, Lot(s) 80016, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

304-14-BZ

1034 Olympia Boulevard, Between Mapleton Avenue and Hempstead Avenue, Block 0380, Lot(s) 80015, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

304-14- BZ

1034 Olympia Boulevard, , Block , Lot(s) , Borough of , **Community Board: .** Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. district.

305-14-BZ

296 Adams Avenue, Between Mapleton Avenue and Hempstead Avenue, Block 0367, Lot(s) 30011, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X district.

306-14-BZ

156 Baden Place, , Block 0381, Lot(s) 00018, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

R31 district.

307-14-BZ

540 Hunter Avenue, Between Grimsby Street and Freeborn Street, Block 0379, Lot(s) 60024, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

308-14-BZ

179 Kiswick Street, Between Midland Avenue and Bedford Avenue, Block 0373, Lot(s) 50042, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

309-14-BZ

55 Hempstead Avenue, Between Colony Avenue and Baden Place, Block 0380, Lot(s) 90003, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

310-14-BZ

297 Colony Avenue, Between Midland Avenue and Lincoln Avenue, Block 0381, Lot(s) 40032, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

311-14-BZ

178 Kiswick Street, Between Midland Avenue and Bedford Avenue, Block 0373, Lot(s) 60019, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

312-14-BZ

65 Hempstead Avenue, Between Baden Place and Patterson Avenue, Block 0381, Lot(s) 00008, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to

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waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R31 district.

313-14-BZ

212 East 57th Street, Located South of East 57th St, 135 ft. Est of the corner formed by the intersection of 3rd avenue and East 57th Street., Block 1330, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to change the use group fro Retail 32-15C to Physical Culture Establishment 73-36 located in the cellar and first floor levels of a 24-store mixed residential & commercial building, located within an C1-9 zoning district. C1-9 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

DECEMBER 9, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 9, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

32-14-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Little Morrow LLC, owner.

SUBJECT – Application February 13, 2014 – Proposed construction of a retail/warehouse building located partially within the bed of a mapped street contrary to Article 3, Section 35 of the General City Law and waiver of bulk non-compliances under §72-01-(g). M-2-1 Zoning District. PREMISES AFFECTED – 2560 Forest Avenue, southwest corner of intersection of Forest Avenue and Elizabeth Grove Road, Block 1384, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

180-14-A

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for EXG 332 W 44 LLC c/o Edison Properties, owner.

SUBJECT – Application August 1, 2014 – Appeal challenging the Department of Building's determination that the subject façade treatment located on the north wall is an impermissible accessory sign as defined under the ZR Section 12-10. C6-2SCD zoning district.

PREMISES AFFECTED – 332 West 44th Street, south side West 44th Street, 378 west of the corner formed by the intersection of West 44th Street and 8th Avenue and 250' east of the intersection of West 44th Street and 8th Avenue, Block 1034, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

DECEMBER 9, 2014, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 9, 2014, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

183-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Ann/Nassau Realty LLC, owner; Blink Nassau Street, Ink., lessee.

SUBJECT – Application August 6, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within portions of an existing mixed use building. C5-5(LM) zoning district.

PREMISES AFFECTED – 113 Nassau Street aka 6 Theater Alley, northwest side of Nassau Street, 35.02' north of Ann Street, Block 90, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #1M

Ryan Singer, Executive Director

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REGULAR MEETING TUESDAY MORNING, NOVEMBER 18, 2014 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez

SPECIAL ORDER CALENDAR

724-56-BZ

APPLICANT – Eric Palatnik, P.C., for Praela Enterprises Ink., owner.

SUBJECT – Application June 12, 2014 – Amendment of a previously approved variance which permitted automotive repair (UG 16B). Application is to amend the length of an extension of term that was granted the Board from five years to ten years which expired November 20, 2012. R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, west side of Francis Lewis Boulevard, between 42nd Road and Northern Boulevard, Block 5373, Lot 26, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit a change to the length of the term for an automotive repair station; and

WHEREAS, a public hearing was held on this application on October 21, 2014, after due notice by publication in *The City Record*, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the Auburndale Improvement Association provided testimony in opposition to the proposed ten-year term, citing historic use of the site contrary to the conditions of the grant, including the storage of commercial vehicles onsite, excessive signage, and lack of landscaping; and

WHEREAS, the subject site is located on the west side of Francis Lewis Boulevard between 42nd Road and Northern Boulevard, within a C2-2 (R3-2) zoning district; and

WHEREAS, the site has 114.64 feet of frontage along Francis Lewis Boulevard and 10,020 sq. ft. of lot area; it is occupied by one-story automotive repair station (Use Group 16B) with 1,680 sq. ft. of floor area (0.17 FAR); and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 19, 1957, when the Board

granted a variance to permit the construction and maintenance of a gasoline service station with accessory uses and parking for cars awaiting service for a term of 15 years; and

WHEREAS, subsequently, the term has been extended and the grant amended by the Board at various times; the most recent extension was on November 20, 2012, for a term of five years, to expire on November 19, 2017; and

WHEREAS, the applicant states that, as a small business owner, the five-year term imposes a financial hardship; the applicant notes that the five-year term was imposed due to certain historic non-compliances, which have since been eliminated; and

WHEREAS, the applicant states that the only non-compliance with the conditions of the 2012 grant was an illegally-parked commercial truck, which used the site for overnight parking for a limited period of time in early 2013; and

WHEREAS, therefore, the applicant states that it has operated in substantial compliance with the 2012 grant and seeks an amendment to modify the term of the 2012 grant from five years to ten years; and

WHEREAS, at hearing, the Board questioned a member of the Auburndale Improvement Association regarding the site's compliance with the conditions of the grant; and

WHEREAS, in response, the member acknowledged that the site has been operated in accordance with the conditions of the grant, with the exception of the isolated commercial truck parking incident discussed above; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment and extensions of term and time to obtain a certificate are appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 5, 2008, so that as amended the resolution reads: "to permit an extension of term for ten years from the prior grant, to expire on November 19, 2022; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received November 3, 2014'-(2) sheets; and *on further condition*:

THAT the term of this grant will be for ten years from the date of the prior grant, to expire on November 19, 2022;

THAT parking on the site will be limited to vehicles awaiting service and any other commercial or overnight parking is prohibited;

THAT signage and landscaping will conform to the BSA-approved plans;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

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Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 401766665)

Adopted by the Board of Standards and Appeals, November 18, 2014.

162-95-BZ & 163-95-BZ

APPLICANT – Warshaw Burstein, LLP, for Mario Bonavita, owner; Pelham Bay Fitness Group, LLC, owner. SUBJECT – Application April 25, 2014 – Extension of Term of a previously approved Special Permit (§73-36) on the first and mezzanine floor of the existing building to allow for its continued operation. C2-4 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, southeast side of Westchester Avenue between Mahan Avenue and Hobart Avenue, Block 4196, Lot(s) 9, 11, 13, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of previously granted special permits for a physical culture establishment (“PCE”), which expired on April 24, 2014; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the PCE is located on the south side of Westchester Avenue, between Mahan Avenue and Hobart Avenue, partially within a C2-4 (R6) zoning district and partially within a C2-4 (R7-1) zoning district; and

WHEREAS, the site comprises three separate tax lots (Lots, 9, 11, and 13) occupied by two adjoining one-story and mezzanine commercial buildings; the 3060 Westchester Avenue building is located on Lot 9, and the 3074 Westchester Avenue building is located on Lot 11 and a portion of Lot 13; and

WHEREAS, the applicant states that the buildings have an opening between them and the subject PCE operates in both buildings; and

WHEREAS, the PCE currently occupies a combined total of 17,212 sq. ft. of floor area on the first floors and mezzanines of the two buildings (8,551 sq. ft. of floor area in the 3060 Westchester Avenue building and 8,661 sq. ft. of

floor area in the 3074 Westchester Avenue building); and

WHEREAS, the applicant notes that the PCE is operated as Planet Fitness; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 30, 1996 when, under the subject calendar numbers, the Board granted special permits for a PCE in the subject buildings for a term of ten years, which expired on July 30, 2006; and

WHEREAS, most recently, on April 24, 2012, the Board amended the grants to legalize an increase in the PCE’s size and extended the terms of the grants for two years, to expire on April 24, 2014; and

WHEREAS, therefore, the applicant now seeks a ten-year extension of the term of the grants; and

WHEREAS, at hearing, the Board questioned whether there would be sufficient parking for nighttime patrons of the PCE with the parking lot closed; and

WHEREAS, in response, the applicant stated that street parking was ample to accommodate the nighttime patrons of the PCE; and

WHEREAS, accordingly, based upon its review of the record, the Board finds that a ten-year extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 30, 1996, so that as amended the resolution reads: “to extend the term for a period of ten years from the prior expiration of the grant, to expire on April 24, 2024, *on condition* that all work will substantially conform to the prior BSA-approved drawings; and *on further condition*:

THAT the term of this grant shall expire on April 24, 2024;

THAT accessory off-street attendant parking for 25 motor vehicles will be provided on the site, except between the hours of 12:00 a.m. and 6:00 a.m.;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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 18, 2014.

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178-03-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, Inc., owner.

SUBJECT – Application June 6, 2014 – Extension of Term of a Special Permit (§73-211) permitting the operation of an automotive service station (UG 16B) which expired on April 28, 2014. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 114-02 Van Wyck Expressway, south west corner of Linden Boulevard and Van Wyck Expressway, Block 11661, Lot 7, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for an automotive service station, which expired on April 28, 2014; and

WHEREAS, a public hearing was held on this application on September 16, 2014 after due notice by publication in *The City Record*, with a continued hearing on October 28, 2014, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, the subject site is located at the southwest corner of the intersection of a service road for the Van Wyck Expressway and Linden Boulevard, within a C2-2 (R3-2) zoning district; and

WHEREAS, the site is occupied by a one-story automotive service station (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the site since May 7, 1948, when under BSA Cal. No. 512-48-BZ, the Board granted a variance to allow the construction and operation of a gasoline service station contrary to use regulations; and

WHEREAS, on October 28, 2003, under the subject calendar number, the Board granted an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to legalize the operation of the site as an automotive service station, to expire on April 28, 2004; on February 15, 2005, the Board reopened the grant and extended the term of the special permit until April 28, 2014; and

WHEREAS, accordingly, the applicant now seeks a further extension of the term; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove excessive signage from the site; (2) provide proof that the underground storage tanks at the site are not leaking; and (3) replace the worn and/or missing slats in the chain link fence; and

WHEREAS, as to the signage, the applicant submitted photographs depicting the removal of the excessive signage; and

WHEREAS, as to the underground storage tanks, the applicant represents that there are no underground storage tanks at the site; the applicant also notes that there was a spill on the site on January 25, 2012, which, according to New York State Department of Environmental Conservation records, was remedied and closed on February 9, 2012; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment and extensions of term and time to obtain a certificate are appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 28, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration, to expire on April 28, 2024; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received June 6, 2014’-(5) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on April 28, 2024;

THAT the worn and missing slats in the fence will be replaced;

THAT the fence, including its slats, will be maintained in good condition;

THAT a certificate of occupancy will be obtained by November 18, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 18, 2014.

833-52-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Zonar LLC, owner.

SUBJECT – Application March 14, 2014 – ZR (§11-411) Extension of Term for the continued operation of a gasoline service station (*Sunoco*) which expired on January 15, 2012; Amendment to convert the existing service bays to a convenience store; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 5916-30 Foster Avenue, Foster Avenue and Southwest corner of Ralph Avenue, Block 7955, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

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Negative:.....0
ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

698-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application May 21, 2014 – Amendment of a previously approved variance to permit the conversion of the convenience store to a relocate and re-size curb cuts and to legalize the existing remediation equipment and location of the tanks and permit additional trees on the site. C2-2 zoning district.

PREMISES AFFECTED – 2773 Nostrand Avenue, northeast corner of Kings Highway and Nostrand Avenue, Block 7684, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC., owner.

SUBJECT – Application January 9, 2014 – Amendment (§11-412) to convert existing automotive service bays into an accessory convenience store and enlarge the accessory building at an existing gasoline service station. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, southwest corner of Victory Boulevard and Manor Road, Block 709, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

902-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 116-118 West 29th Street, south

side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49, 50, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

1096-79-BZ & 1097-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 120 & 114 West 29th Street, south side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49 (aka 52), Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

964-87-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilt Petroleum, Ink., owner; Lotus Management Group II, LLC, lessee.

SUBJECT – Application April 21, 2014 – Amendment to an approved Variance for the operation of an Automotive Service Station (UG 16B), with accessory uses.

The Amendment seeks to convert a portion of a service bay to an accessory convenience store; Extension of Time to obtain a Certificate of Occupancy which expired on May 10, 2012; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 786 Burke Avenue, aka 780-798 Burke Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12B

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

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203-92-BZ

APPLICANT – Jeffrey Chester, Esq., for Mowry Realty Associates LLC., The Fitness Place Forest Hills NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Lucille Roberts Gym*), which expired on March 1, 2014. C2-3(in R5D) zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side of Austin Street between 70th Avenue and 70th Road, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

148-03-BZ

APPLICANT – Goldman Harris LLC, for The Flower House Condominium, owners; Northwest Real Estate LLC, lessee.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 111/113 West 28th Street, north side of West 28th Street between Sixth and Seventh Avenue, Block 804, Lot(s) 1101-1105, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

164-04-BZ

APPLICANT – Warshaw Burstein, LLP., for 2241 Westchester Avenue Realty Corp., owner; Castle Hill Fitness Group, LLC., lessee.

SUBJECT – Application April 25, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness Center*) occupying the entire second floor of a two story building which expired on July 15, 2014. R6/C2-4 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, Northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application July 22, 2014 – Extension of Time to Complete Construction of a previously granted Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home which expired on January 27, 2013; Waiver of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, between Oriental Boulevard and Hampton Street, Block 8749, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for deferred decision.

APPEALS CALENDAR

265-14-A

APPLICANT – NYC Housing Preservation & Development, for Pasquale D’Angelis, owner.

SUBJECT – Application October 27, 2014 – Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District.

PREMISES AFFECTED – 3812 Atlantic Avenue, between Beach 38th and Beach 40th Streets, Block 7043, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a two-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in *The City Record*, and then to decision on same date; and

WHEREAS, the premises and surrounding area had a

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site and neighborhood examination by Commissioner Montanez; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject property exists in a private community known as Seagate and is located on the tip of Coney Island, within an R3-1 zoning district; and

WHEREAS, the site has 8,000 sq. ft. of lot area and is currently vacant; it has 80 feet of frontage along Atlantic Avenue, an access road that does not appear on the City Map; and

WHEREAS, the applicant proposes to rebuild a two-family home with 4,000 sq. ft. of floor area (0.50 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant requests a waiver of General City Law § 36; and

WHEREAS, by letter dated November 6, 2014, the Fire Department states that it has reviewed the proposal and has no objection; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked “November 17, 2014”-(1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code;

THAT interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code;

THAT the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code;

THAT this approval is limited to the Build it Back program;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

266-14-A

APPLICANT – NYC Housing Preservation & Development, for Jack Suben, owner.

SUBJECT – Application October 27, 2014 – Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District.

PREMISES AFFECTED – 3740 Atlantic Avenue, between Beach 38th and West 37th Streets, Block 7044, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Otley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a two-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in *The City Record*, and then to decision on same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examination by Commissioner Montanez; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject property exists in a private community known as Seagate and is located on the tip of Coney Island, within an R3-1 zoning district; and

WHEREAS, the site has 2,500 sq. ft. of lot area and is currently vacant; it has 25 feet of frontage along Atlantic Avenue, an access road that does not appear on the City Map; and

WHEREAS, the applicant proposes to build a two-family home with 1,793 sq. ft. of floor area (0.72 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated November 6, 2014, the Fire Department states that it has reviewed the proposal and has no objection; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

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Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked "November 17, 2014"-(1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code;

THAT interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code;

THAT the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code;

THAT this approval is limited to the Build it Back program;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

267-14-A

APPLICANT – NYC Housing Preservation & Development, for Theresa Liberi, owner.

SUBJECT – Application October 27, 2014 – Waiver of Section 36, Article 3 of the General City Law, for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties not fronting a mapped street, which are registered in the NYC Build it Back Program property. R3-1 Zoning District.

PREMISES AFFECTED – 3742 Atlantic Avenue, between Beach 38th and West 37th Streets, Block 7044, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a single-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on November 18, 2014 after due notice by publication in *The City Record*, and then to decision on same date and

WHEREAS, the premises and surrounding area had site and neighborhood examination by Commissioner Montanez; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject property exists in a private community known as Seagate and is located on the tip of Coney Island, within an R3-1 zoning district; and

WHEREAS, the site has 2,500 sq. ft. of lot area and is currently vacant; it has 50 feet of frontage along Atlantic Avenue, an access road that does not appear on the City Map; and

WHEREAS, the applicant proposes to build a two-family home with 1,793 sq. ft. of floor area (0.72 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated November 6, 2014, the Fire Department states that it has reviewed the proposal and has no objection; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked "November 17, 2014"-(1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code;

THAT interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code;

THAT the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code;

THAT this approval is limited to the Build it Back program;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

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300-08-A

APPLICANT – Law office of Marvin B. Mitzner LLC, for Steven Baharestani, owner.

SUBJECT – Application April 24, 2014 – Extension of time to complete construction and obtain a Certificate of Occupancy for the construction of a hotel under common law vested rights. M1-2 /R5-B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street between 39th and 40th Avenues, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for continued hearing.

95-14-A

APPLICANT – Bernard Marson, for BBD & D Ink., owner.

SUBJECT – Application May 5, 2014 – MDL 171 & 4.35 to allow for a partial one-story vertical enlargement (*Penthouse*) of the existing 3 story and basement building located on the site. Pursuant to the 310 MDL. R8 zoning district.

PREMISES AFFECTED – 237 East 72nd Street, north Side of East 72nd Street 192.6' West of 2nd Avenue, Block 1427, Lot 116, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

ZONING CALENDAR

93-14-BZ

CEQR #14-BSA-146M

APPLICANT – Eric Palatnik, P.C., for 455 West 37 LLC., owner; MJM Boxing LLC., lessee.

SUBJECT – Application September 16, 2014 – Special Permit (§73-36) to legalize a physical culture establishment (*Title Boxing Club*). R8A/C2-5 zoning district.

PREMISES AFFECTED – 455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 25, 2014, acting on DOB Application No. 121184912, reads, in pertinent part:

ZR 32-10 – Proposed physical culture establishment is not permitted as of right in R8A/C2-5 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-5 (R8A) zoning district and partially within a C2-8 zoning district, within the Special Hudson Yards District, the legalization of an existing physical culture establishment (“PCE”) operating on the first story of a 23-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in the *City Record*, with a continued hearing on October 28, 2014, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site spans the west side of Tenth Avenue between West 37th Street and West 38th Street; it is located partially within a C2-5 (R8A) zoning district and partially within a C2-8 zoning district, within the Special Hudson Yards District; and

WHEREAS, the site has 197.5 feet of frontage along Tenth Avenue, 150.5 feet of frontage along West 37th Street, 195.5 feet of frontage along West 38th Street, and 34,167 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 23-story mixed residential and commercial building; and

WHEREAS, the PCE occupies 6,107 sq. ft. of floor area on the first story and operates as Title Boxing Club; and

WHEREAS, the PCE’s hours of operation are Monday through Friday, from 5:45 a.m. to 9:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board noted the application was a legalization and indicated that sound attenuation measures must be shown on the plans; and

WHEREAS, in response, the applicant recast the application as a legalization and submitted amended plans noting the PCE’s sound attenuation measures; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit; and

WHEREAS, the Board finds that, under the conditions

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and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-146M, dated May 2, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-5 (R8A) zoning district and partially within a C2-8 zoning district, within the Special Hudson Yards District, the legalization of an existing PCE operating on the first story of an 23-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked "Received May 2, 2014"-(3) sheets; *on further condition*:

THAT the term of the PCE grant will expire on June 1, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 November 18, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

97-14-BZ

CEQR #14-BSA-149M

APPLICANT – Warshaw Burstein, LLP, for 22-26 East 14 Condominium, owner; 22 East 14th St. Fitness Group, LLC, lessee.

SUBJECT – Application May 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on portions of the ground and cellar levels of the existing building. C6-1 zoning district.

PREMISES AFFECTED – 22-26 East 14th Street, between 5th Avenue and University Place, Block 571, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 9, 2014, acting on DOB Application No. 121978182, reads, in pertinent part:

Proposed physical culture establishment is not permitted as of right in a C6-1 zoning district, per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in the *City Record*, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot with frontages along East 13th Street (82'-10") and East 14th Street (75'-0"), between Fifth Avenue and University Place, within a C6-1 zoning district; and

WHEREAS, the site has 15,747 sq. ft. of lot area and is occupied by a five-story commercial building with 78,735 sq. ft. of floor area; and

WHEREAS, the building, known as the Baumann Brothers Furniture and Carpets Store, was designated as a landmark by the Landmarks Preservation Commission ("LPC") in 2008; and

WHEREAS, the PCE will occupy a total of 14,105 sq. ft. of floor space, with 632 sq. ft. of floor area on the first story and 13,743 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will operate as Planet Fitness; and

WHEREAS, the PCE's hours of operation will be 24

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hours per day, seven days per week; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, LPC has approved the proposed alterations of the building by Certificate of Appropriateness, dated June 6, 2014 and the proposed signage by Permit for Minor Work, dated September 24, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board requested clarification regarding whether the PCE was in operation; and

WHEREAS, in response, the applicant represented that the PCE is not operating; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-149M dated May 8, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the operation of a PCE in portions of the cellar and first story of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked "Received October 8, 2014" four (4) sheets; *on further condition*:

THAT the term of the PCE grant will expire on November 18, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or

maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 November 18, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

100-14-BZ CEQR #14-BSA-152X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Madina Eco Friendly Ink., owner; Blink Macombs Road, Ink., lessee.

SUBJECT – Application May 8, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (PCE) (*Blink Fitness*) within a portions of a new two-story commercial building (currently under construction). C8-3 zoning district.

PREMISES AFFECTED – 1490 Macombs Road, east side of Macombs Road intersection Macombs Road, W 172nd Street and Inwood Avenue, Block 2865, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 2, 2014, acting on DOB Application No. 220307692, reads, in pertinent part:

Proposed conversion . . . from retail establishment to physical culture establishment requires BSA approval; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-3 zoning district, the operation of a physical culture establishment ("PCE") in portions of the first and second stories of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 28, 2014, after due notice by publication in the *City Record*, and then to decision on

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November 18, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped corner lot located at northwest corner of the intersection of Macombs Road, West 172nd Street, and Inwood Avenue, within a C8-3 zoning district; and

WHEREAS, the site has 175.14 feet of frontage along Macombs Road, 6.11 feet of frontage along West 172nd Street, 206.17 feet of frontage along Inwood Avenue, and 12,877.5 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with 24,984 sq. ft. of floor area (1.94 FAR); and

WHEREAS, the PCE will occupy a total 16,307 sq. ft. of floor area, with 3,490 sq. ft. of floor area on the first story and 12,817 sq. ft. of floor area on the second story; and

WHEREAS, the PCE will operate as Blink Fitness; and

WHEREAS, the PCE's hours of operation will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-152X, dated May 8, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental

Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-3 zoning district, the operation of a PCE in portions of the first and second stories of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked "Received May 8, 2014"- Four (4) sheets; *on further condition*:

THAT the term of the PCE grant will expire on November 18, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 November 18, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

104-14-BZ CEQR #14-BSA-155K

APPLICANT – Warshaw Burnstein, LLP., for Sam Spikes, LLC, owner; 287 Broadway Fitness Group, LLC., lessee.

SUBJECT – Application May 15, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on a portion of the ground and second floors of a new building, contrary to (§32-31). C4-3 zoning district.

PREMISES AFFECTED – 282 South 5th Street aka 287 Broadway, between Broadway and West of Marcy Avenue, Block 2460, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

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THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 7, 2014, acting on DOB Application No. 320377454, reads, in pertinent part:

Proposed physical culture establishment use is not permitted as-of-right in a C4-3 zoning district, per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first and second stories of a 13-story mixed residential, community facility, and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 7, 2014 after due notice by publication in the *City Record*, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a through lot with frontages along South Fifth Street (140’-2”) and Broadway (140’-2”), between Marcy Avenue and Havemeyer Street, within a C4-3 zoning district; the site has 28,046 sq. ft. of lot area; and

WHEREAS, under construction at the site is a 13-story mixed residential, community facility, and commercial building with 105,906 sq. ft. of floor area (3.78 FAR); and

WHEREAS, the PCE will occupy a total 17,878 sq. ft. of floor area, with 2,008 sq. ft. of floor area on the first story and 15,870 sq. ft. of floor area on the second story; and

WHEREAS, the PCE will operate as Planet Fitness; and

WHEREAS, the PCE’s hours of operation will 24 hours per day, seven days per week; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to clarify its proposed sound attenuation measures; and

WHEREAS, in response, the applicant submitted amended plans to reflect the proposed sound attenuation measures, which include a buffer space between the PCE

and the community facility space on the second story; the applicant also notes that no dwelling will share a demising wall with the PCE; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-155K, dated May 15, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the operation of a PCE in portions of the first and second stories of a 13-story mixed residential, community facility, and commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked “Received November 5, 2014”- Two (2) sheets; *on further condition*:

THAT the term of the PCE grant will expire on November 18, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 November 18, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,

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November 18, 2014.

150-14-BZ

CEQR #15-BSA-015M

APPLICANT – Law Office of Fredrick A. Becker, for Gotham Broad LLC, owner; BFX 30 Broad Street LLC dba BFX Studio, lessee.

SUBJECT – Application June 25, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*BFX Studio*) in portions of the second floor and second floor mezzanine with an entrance at the ground level. C5-5 zoning district.

PREMISES AFFECTED – 30 Broad Street, between Exchange Place and Beaver Street, Block 24, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 12, 2014, acting on DOB Application No. 121974300, reads, in pertinent part:

Proposed physical culture establishment at the first and second and mezzanine floor(s) is not permitted as-of-right in a C5-5 zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) in portions of the first and second stories and second story mezzanine of a 48-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 28, 2014, after due notice by publication in the *City Record*, and then to decision on November 18, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site spans the south side of Exchange Place between New Street and Broad Street, within a C5-5 zoning district, within the Special Lower Manhattan District; and

WHEREAS, the site has 87.83 feet of frontage along New Street, 88.08 feet of frontage along Broad Street, 149.83 feet of frontage along Exchange Place, and 12,788 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 48-story commercial building; and

WHEREAS, the PCE will occupy a total 15,806 sq. ft. of floor area, with 615 sq. ft. of floor area on the first story,

10,494 sq. ft. of floor area on the second story, 4,697 sq. ft. of floor area on the second story mezzanine; and

WHEREAS, the PCE will operate as BFX Studio; and

WHEREAS, the PCE’s hours of operation will be Monday through Friday, from 5:00 a.m. to 11:00 p.m. and Saturday and Sunday, from 6:00 a.m. to 8:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 15-BSA-015M, dated June 25, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District, the operation of a PCE in portions of the first and second stories of a 48-story commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked “Received June 25, 2014”- Sixteen (16) sheets and “Received August 14, 2014”- One (1) sheet *on further condition*:

THAT the term of the PCE grant will expire on November 18, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or

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maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

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 November 18, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 18, 2014.

153-11-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoros Parais, owner.

SUBJECT – Application September 21, 2011 – Reinstatement (§§11-411 & 11-412) to permit the continued operation of an automotive repair use (UG 16B); amendment to enlarge the existing one story building; Waiver of the Board's Rules. C1-3 zoning district.

PREMISES AFFECTED – 27-11 30th Avenue, between 27th Street and 39th Street. Block 575, Lot 23. Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.

SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

174-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for 58-66 East Fordham Road, owner; LRHC Fordham Road LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the reestablishment of an expired physical culture establishment (*Lucille Roberts*) on the second floor, contrary to (§32-31). C4-4 zoning district.

PREMISES AFFECTED – 2449 Morris Avenue a/k/a 58-66 East Fordham Road, Block 3184, Lot 45, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Off Calendar.

222-13-BZ

APPLICANT – Eric Palatnik, P.C., for 2464 Coney Island Avenue, LLC, owner.

SUBJECT – Application July 23, 2013 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C8-1/R5 zoning district.

PREMISES AFFECTED – 2472 Coney Island Avenue, southeast corner of Coney Island Avenue and Avenue V, Block 7136, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for continued hearing.

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to legalize a physical culture establishment (*Brick CrossFit*) on the ground floor and cellar of an existing 10-story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

271-13-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

323-13-BZ

APPLICANT – Eric Palatnik, P.C., for Galt Group Holdings, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to permit the proposed alteration, which will enlarge the footprint and include a vertical enlargement at the rear portion of the existing four story, plus cellar and basement contrary to lot coverage §23-145. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 127 East 71st Street, East 71st Street between Park and Lexington Avenues, Block 1406, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for deferred decision.

5-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

25-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Yeshiva of Flatbush, LLC, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing four story Yeshiva (*Yeshiva of Flatbush*). R2 & R5 zoning districts.

PREMISES AFFECTED – 1601-1623 Avenue J aka 985-995 East 16th Street & 990-1026 East 17th Street, Block 6709, Lot(s) 32, 34, 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

38-14-BZ

APPLICANT – Eric Palatnik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

96-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.

SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district

Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by

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manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district. PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

COMMUNITY BOARD #12M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

132-14-BZ

APPLICANT – Warshaw Burstein, LLP, for 441 Rockaway, LLC, owner; 441 Rockaway Ave. Fitness Group, LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building, located within a C4-3 zoning district.

PREMISES AFFECTED – 441 Rockaway Avenue, frontage on Rockaway Avenue and Thatford Avenue, south of Pitkin Avenue, Block 3522, Lot(s) 9, 26, Borough of Brooklyn.

COMMUNITY BOARD #16BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 18, 2014

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez

321-13-BZ

APPLICANT – Eric Palatnik, P.C., for Alejandro Finardo, owner.

SUBJECT – Application December 18, 2013 – Variance (§72-21) for the construction of a three family home on a vacant lot, contrary to side yard requirements (§23-462(a)) and the parking space requirements of (§25-32). R5 zoning district.

PREMISES AFFECTED – 37-19 104th Street, between 37th Avenue and 37th Road, Block 1771, Lot 42, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

329-13-BZ

APPLICANT – Alexander Levkovich, for Sam Ravit, owner.

SUBJECT – Application December 31, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (23-141). R3-1 zoning district.

PREMISES AFFECTED – 145 Girard Street, east side of Girard Street, approximately 600' south of intersection with Hampton Avenue, Block 8750, Lot 386, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 9, 2015, at 10 A.M., for adjourned hearing.

94-14-BZ

APPLICANT – Dennis D. Dell'Angelo, for Rivka Shapiro, owner.

SUBJECT – Application May 5, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1150 East 22nd Street, west side of East 22nd Street, 140' north of Avenue "K", Block 7603, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for continued hearing.

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119-14-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1151 Third Avenue LLC, owner; Flywheel Sport Inc., lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Flywheel Sports*) of the second and third floor of the existing building. Located within a C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

120-14-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1151 Third Avenue, owner; Upper East Fitting Room LLC, lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Fhitting Room*) on the fifth floor of the existing building. C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67, north East corner of 3rd Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

121-14-BZ

APPLICANT – Law office of Jay Goldstein, PLLC, for 1151 Third Avenue, owner; Strengthen Lengthen Tone LLC., lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow for the operation of a physical culture establishment (*SLT*) on the 4th floor of the existing building. C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, northeast corner of 3rd Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to December

16, 2014, at 10 A.M., for decision, hearing closed.

151-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Fifth Partners, LLC., owner; Exhale Enterprises Inc., owner.

SUBJECT – Application June 26, 2014 – Special Permit (§73-36) to legalize the operation of a physical culture establishment/ yoga studio (*Exhale Enterprises*) on a portion of the ground floor of the subject 12-story commercial building. C6-4A zoning district.

PREMISES AFFECTED – 19 West 21st Street, northerly side of West 21st Street, 309' 10" westerly of Fifth Avenue, Block 823, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

Ryan Singer, Executive Director

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*CORRECTION

The resolution adopted on April 29, 2014, under Calendar No. 285-13-BZ and printed in Volume 99, Bulletin Nos. 16-18, is hereby corrected to read as follows:

285-13-BZ

CEQR #14-BSA-055K

APPLICANT – Warshaw Burstein, LLP, for 495 Flatbush Ave, LLC, owner; 495 Flatbush Fitness Group, LLC, lessee. SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). C8-6 zoning district.

PREMISES AFFECTED – 495 Flatbush Avenue, east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 12, 2013, acting on DOB Application No. 320787314, reads, in pertinent part:

ZR 32-10 - physical culture establishment is not permitted as-of-right in a C8 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a three-story mixed commercial and community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in the *City Record*, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Flatbush Avenue, between Empire Boulevard and Lefferts Avenue, within a C8-2 zoning district; and

WHEREAS, the site has approximately 213 feet of frontage along Flatbush Avenue, approximately 234 feet of frontage along Washington Avenue, and 44,413 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story mixed commercial and community facility building with approximately 78,795 sq. ft. of floor area (1.75 FAR); and

WHEREAS, the proposed PCE will occupy 2,000 sq. ft. of floor area on the first story and approximately 17,080 sq. ft. of floor area on the second story, for a total PCE floor area of approximately 19,080 sq. ft.; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the proposed signage is in accordance with the C8-2 district regulations; and

WHEREAS, in response, the applicant provided a zoning analysis confirming that the proposed signage complies; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No.14BSA055K dated October 8, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the

MINUTES

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 issued a Negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a three-story mixed commercial and community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 12, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 29, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages will be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

The resolution has been amended to correct the 8th WHEREAS in the part which read: “three-story” now reads: “two-story”. Corrected in Bulletin Nos. 45-47, Vol. 99, dated November 27, 2014.

CORRECTION

This resolution adopted on October 28, 2014, under Calendar No. 106-14-A and printed in Volume 99, Bulletin No. 44, is hereby corrected to read as follows:

106-14-A

APPLICANT – Greenberg Traurig, LLP., for 84 William Street Property Owner LLC.

SUBJECT – Application May 22, 2014 – Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30, to allow conversion of existing residential building to transient hotel use. C5-5 (LM) zoning district.

PREMISES AFFECTED – 84 William Street, northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 1, 2014, acting on DOB Application No. 121184672 reads, in pertinent part:

1. Existing inner court for proposed UG 5 transient hotel does not comply with MDL 26.7;
2. Legally required windows for proposed UG 5 transient hotel open onto an inner court which does not comply with MDL 26.7, contrary to MDL 30; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from residential use (Use Group 2) to a transient hotel (Use Group 5), contrary to the court requirements of MDL §§ 26(7) and 30; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, and then to decision on October 28, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of the intersection of William Street and Maiden Lane, within a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the site has 70.08 feet of frontage along William Street, 77.52 feet of frontage along Maiden Lane, and 7,601 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 17-story mixed

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residential and commercial building (the “Building”) with approximately 115,255 sq. ft. of floor area (15.2 FAR) and 121 dwelling units; and

WHEREAS, the site includes a court (the “Court”) with an area of 930 sq. ft. and a minimum distance of 19’-0” from windows opening onto the court and the nearest building wall; and

WHEREAS, the applicant states that the Building was constructed as an office building in 1907 and converted to a multiple dwelling with ground floor retail in 2001 pursuant to Article I, Chapter 5 of the Zoning Resolution; the applicant notes that 75 dwelling units in the Building have legally-required windows opening onto the Court, in accordance with MDL § 277, which permits legally-required windows to open onto a court with a minimum area of 100 sq. ft. and a minimum window-to-window/wall distance of 15’-0”; and

WHEREAS, the applicant proposes to enlarge the Building by two stories and convert it to a transient hotel (Use Group 5) with 137 hotel rooms and Use Group 6 uses on the first story; the applicant proposes extensive alterations to the interior of the building in order to accommodate the proposed uses, including the construction of new mechanical spaces, however, the applicant does not propose changes to the dimensions of the Court or to the windows opening onto the Court; and

WHEREAS, the applicant states that 75 hotel rooms will have legally-required windows opening onto the Court; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered Class B multiple dwellings; therefore, the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 4(32), the Court is considered an “inner court;” and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; the applicant notes that the Zoning Resolution does not provide any standards for courts that serve transient hotels; and

WHEREAS, pursuant to MDL § 30, every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that the Court, which, as noted above, has an area of 930 sq. ft. and a minimum window-to-window/wall distance of 19’-0”, does not satisfy the minimum requirements of MDL § 26(7); in addition, the applicant states that windows opening onto the Court cannot relied upon for light and ventilation, per MDL § 30; and

WHEREAS, accordingly, the applicant requests that the Board invoke its authority under MDL § 310 to permit the

proposed conversion contrary to MDL §§ 26(7) and 30; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in 1907; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts and MDL § 30 mandates that a legally-required window open upon, among other things, a lawful court; therefore, the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the Board also observes that to the extent it permits a court at variance with the requirements of MDL § 26(7), such court is a “lawful court” upon which legally-required windows can open in accordance with MDL § 30; and

WHEREAS, turning to the findings under MDL § 310(2)(a), the applicant asserts that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, in support of this assertion, the applicant submitted a comparison between the proposal and the conversion of the Building to a transient hotel with a court that satisfies the minimum requirements of MDL §§ 26(7) and 30; and

WHEREAS, the applicant states that a complying court would require extensive demolition and exterior construction work around the court area to create the complying court and significant modifications to the layout of the hotel rooms, and would result in ten fewer rooms; and

WHEREAS, further, the applicant states that providing a complying court would cost approximately \$5,000,000 more than the proposal and yield \$950,000 less in annual revenue; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) and 30 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states the primary intent of MDL §§ 26(7) and 30 is to ensure that

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rooms within multiple dwellings have adequate light and ventilation; and

WHEREAS, the applicant states that although the dimensions of the Court are deficient under the MDL, the Court is contiguous with the 550 sq.-ft. inner court of the building located on Block 68, Lot 11; thus, the total area of the combined courts is 1,480 sq. ft., which is 280 sq. ft. more than the maximum required (1,200 sq. ft.) under MDL § 26(7); and

WHEREAS, the applicant states, as noted above, that, currently, the Building is permitted to be occupied for permanent residence purposes under MDL § 277 and the applicant asserts that it would be incongruous with the spirit and intent of the MDL to prevent transient use where permanent use is permitted; and

WHEREAS, likewise, the applicant states that visitors to the 75 proposed hotel rooms enjoy nearly the same amount of light and ventilation (19'-0" to the nearest window or wall) as visitors to hotels constructed with a rear yard depth of 20'-0" (the minimum required depth for a transient hotel under the Zoning Resolution); and

WHEREAS, the applicant also notes that because the Building will be used as a transient hotel, it will be used by visitors to New York City, who are unlikely to spend a substantial portion of daylight hours in their rooms; and

WHEREAS, at hearing, the Board inquired as to whether the hotel rooms would be provided with mechanical ventilation; and

WHEREAS, in response, the applicant confirmed that all 137 rooms would have mechanical ventilation in accordance with the applicable provisions of the relevant construction codes; and

WHEREAS, based on the above, the Board finds that the proposed modifications to the court requirements of MDL §§ 26(7) and 30 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested modification of the court requirements of MDL §§ 26(7) and 30 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Department of Buildings, dated May 1, 2014, is modified and that this application is granted, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received August 25, 2014"- (12) sheets and "October 3, 2014"- (5) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 28, 2014.

The resolution has been amended to correct the SUBJECT. Corrected in Bulletin Nos. 45-47, Vol. 99, dated November 27, 2014.

BULLETIN

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December 3, 2014

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Tuesday, November 25, 2014**

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327-06-BZ 133 East 58th Street, Manhattan
245-32-BZ 123-05 101st Street, Queens
921-57-BZ 6602 New Utrecht Avenue, Brooklyn
76-12-BZ 148 Norfolk Street, Brooklyn
162-14-A 100 Giegerich Avenue, Staten Island
665-39-A &
107-14-A 55-57 West 44th Street, Manhattan
166-12-A 638 East 11th Street, Manhattan
107-13-A 638 East 11th Street, Manhattan
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14-14-A 47-04, 47-06, 47-08 198th Street, Queens
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163-14-BZ thru
165-14-A 502, 504, 506 Canal Street, Manhattan
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Thru 37-12-A
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189-13-A 20 Dea Court, Staten Island
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Affecting Calendar Numbers:

166-14-BZ 12 West 27th Street, Manhattan
125-14-BZ 11 Avenue C, Manhattan

Correction950

Affecting Calendar Numbers:

300-12-BZ 36 West 93rd Street aka 33 West 92nd Street, Manhattan

DOCKETS

New Case Filed Up to November 25, 2014

314-14-BZ

1604 Williamsbridge Road, Located on the northwest corner of the intersection formed by Williamsbridge Road and Pierce Avenue, Block 4111, Lot(s) 43, Borough of **Bronx, Community Board: 11**. Special Permit (§73-125) to allow construction of an UG4 health care facility that exceed the maximum permitted floor area of 1,500 sf. Located within an R4A zoning district.. R4A district.

315-14-A

485 Seventh Avenue, Northeast corner of West 36th Street and Seventh Avenue, Block 812, Lot(s) 1, 2, Borough of **Manhattan, Community Board: 5**. MDL (Multiple Dwelling Law (section 310(2)(a) for waivers to permit the conversion of and small addition to the building, located within an M1-6 Special Garment Center District. M1-6 district.

316-14-BZ

115 Heyward Street, Northern side of Heyward Street between Lee Avenue and Bedford Avenue, Block 2225, Lot(s) 42, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21): to permit the enlargement of an existing Yeshiva building for lot coverage(§24-11) and rear yard (§24-36, located in an R6 zoning district. R6 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

DECEMBER 16, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 16, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

142-92-BZ & 289-13-BZ

APPLICANT – Preserve Park Slope, Inc. c/o Albert K. Butzel, for New York Methodist Hospital, owner.
SUBJECT – Application November 3, 2014 – Rehearing: To request a reargument or rehearing of the Board's decision of June 17, 2014 in which the Board granted a variance that allowed NY Methodist Hospital to build a new ambulatory care facility on the property identified above. R6, R6B, R7B zoning districts.
PREMISES AFFECTED – 506 and 473-541 6th Street, Eighth Avenue, 5th Street and Sixth Street, Block 1084, Lot(s) 39, 164, 1001, 1084, Borough of Brooklyn.
COMMUNITY BOARD #6BK

APPEALS CALENDAR

65-14-A thru 88-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP., for Block 7092 LLC, owner.
SUBJECT – Application April 29, 2014 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1(SRD) zoning district.
PREMISES AFFECTED – Lemon Drop and Apricot Court, Block 7105, Lots 148 thru 171, Borough of Staten Island.
COMMUNITY BOARD #3SI

113-14-A

APPLICANT – Howard Goldman, Esq., for Speakeasy 86 LLC c/o Newcastle Realty Service, owner.
SUBJECT – Application May 29, 2014 – Appeal seeking revocation of a permit issued that allows a nonconforming use eating/drinking establishment to resume after being discontinued for several years. R6 zoning district.
PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.
COMMUNITY BOARD #3M

128-14-A

APPLICANT – Bryan Cave LLP, for Alicat Family LLC & AEEE Family LLC, owner.
SUBJECT – Application June 6, 2014 – Appeal challenging Department of Buildings' determination that the proposed off-street loading berth is not accessory to a medical office. C2-5/R7A zoning district.
C2-5/R7A zoning district.
PREMISES AFFECTED – 47 East 3rd Street, East 3rd Street between First and Second Avenues, Block 445, Lot 62, Borough of Manhattan.
COMMUNITY BOARD #3M

192-14-A thru 198-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Mantione, owner.
SUBJECT – Application August 15, 2014 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2(SRD) zoning district.
PREMISES AFFECTED –
10 Winslow Place, Block 6373, Lot 40
12 Winslow Place, Block 6373, Lot 42
18 Winslow Place, Block 6373, Lot 43
20 Winslow Place, Block 6373, Lot 45
26 Winslow Place, Block 6373, Lot 145
30 Winslow Place, Block 6373, Lot 146
32 Winslow Place, Block 6373, Lot 147
COMMUNITY BOARD #3SI

DECEMBER 16, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 16, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

63-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 188 W. 230th Street Corporation, owner; Atlas Athletics, Inc., lessee.
SUBJECT – Application April 23, 2014 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Astral Fitness*). M1-1 zoning district.
PREMISES AFFECTED – 5500 Broadway, southeast corner of intersection of Broadway and W 230th Street, Block 3264, Lot 109, Borough of Bronx.
COMMUNITY BOARD #8BX

CALENDAR

118-14-BZ

APPLICANT – Rampulla Associates Architects, for Mangone Developers Corporation, owner.

SUBJECT – Application June 3, 2014 – Variance (§72-21) proposed to construct a three story sixteen Dwelling Unit Condominium with accessory parking for thirty six cars. Located within R3X, R1-2 split zoning district and in an NA-1 designated area.

PREMISES AFFECTED – 1891 Richmond Road, northwest side of Richmond 2667.09' southwest of the corner of Four Corners Road and Richmond Road, Block 895, Lot (s) 61, 63, 65, 67 (61 tentative), Borough of Staten Island.

COMMUNITY BOARD #2SI

124-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuriy Teyf, owner.
SUBJECT – Application June 2, 2014 – Special Permit (§73-622) for the enlargement of a single-family detached residence to be converted into a two-family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R4 zoning district.

PREMISES AFFECTED – 1112 Gilmore Court, southern side of Gilmore Court between East 11th Street and East 12th Street, Block 7455, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

168-14-BZ

APPLICANT – Warshaw Burnstein, LLP, for Michael Baum, LLC, owner; Barry's Boot camp NYC. LLC, lessee.
SUBJECT – Application July 14, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Barry's Bootcamp*) within the existing building. M1-5B zoning district.

PREMISES AFFECTED – 419 Lafayette Street, east side of Lafayette Street between East 4th Street and Astor Place, Block 544, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

177-14-BZ

APPLICANT – Eric Palatnik, PC, for MADDD Properties LLC 34 Arden Lane, owner; CF Flatbush LLC, lessee.

SUBJECT – Application July 24, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within a portion of an altered building. C4-4A/R6A zoning district.

PREMISES AFFECTED – 1038 Flatbush Avenue, 180' south of intersection of Flatbush Avenue and Regent Place, Block 5123, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

184-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Hamilton Plaza Associates, owner; Brooklyn Park Slope Fitness, lessee.

SUBJECT – Application August 6, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*) on the third floor of the existing building at the premises. M1-2 zoning district.

PREMISES AFFECTED – 1-37 12th Street, eastern side of the intersection between Hamilton Place and 12th Street, Block 1007, Lot 172, Borough of Brooklyn.

COMMUNITY BOARD #6BK

185-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Roza 14 WLLC, owner; 14 Wall Day Spa LLC, lessee.

SUBJECT – Application August 6, 2014 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar floor of the existing building at the premises, which is located in a C5-5 zoning district.

PREMISES AFFECTED – 14 Wall Street, north side of Wall Street with frontage on Nassau Street and Pine Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

285-14-BZ thru 288-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X zoning district.

PREMISES AFFECTED –
84 McLaughlin Street, Block 0341, Lot 20049
20 Orlando Street, Block 0340, Lot 30016
138 Roma Avenue, Block 0408, Lot 80025
131 Cedar Grove Avenue, Block 0408, Lot 70002
Borough of Staten Island.

COMMUNITY BOARD #2SI

291-14-BZ thru 300-14-A

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties of HPD/BIB which are located on an unmapped street) on properties which are registered in the NYC Build it Back Program. R3X zoning district.

PREMISES AFFECTED –
19 Milbank Road, Block 0409, Lot 10027
23 Neutral, between Roma Avenue and Cedar Grove

CALENDAR

Avenue, Block 0409, Lot 20026
58 Seafoam Avenue, between Roma Avenue and Cedar
Grove Avenue, Block 0408, Lot 10068
6 Topping Street, between Roma Avenue and Cedar Grove
Avenue, Block 0408, Lot 50042
28 Topping Street, between Roma Avenue and Cedar Grove
Avenue, Block 0408, Lot 50043
Borough of Staten Island.
COMMUNITY BOARD #2SI

303-14-BZ thru 312-14-BZ

APPLICANT – Department of Housing Preservation and
Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special
Permit (ZR 64-92) to waive bulk regulations for the
replacement of homes damaged/destroyed by Hurricane
Sandy, on properties which are registered in the NYC Build
it Back Program. R31 zoning district.

PREMISES AFFECTED –

1032 Olympia Boulevard, between Mapleton Avenue and
Hempstead Avenue, Block 0380, Lot 80016
1034 Olympia Boulevard, between Mapleton Avenue and
Hempstead Avenue, Block 0380, Lot 80015
296 Adams Avenue, between Mapleton Avenue and
Hempstead Avenue, Block 0367, Lot 30011
156 Baden Place, Block 0381, Lot 00018
540 Hunter Avenue, Block 0379, Lot 60024
179 Kiswick Street, Block 50042, Lot 60024
55 Hempstead Avenue, Block 0380, Lot 90003
297 Colony Avenue, Block 0381, Lot 40032
178 Kiswick Street, Block 0373, Lot 60019
65 Hempstead Avenue, Block 0381, Lot 00008
Borough of Staten Island.

COMMUNITY BOARD #2SI

Ryan Singer, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 25, 2014
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez.

SPECIAL ORDER CALENDAR

362-03-BZ

APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corp., owner.

SUBJECT – Application June 10, 2014 – Extension of Term for the continued operation of an accessory commercial open parking lot and accessory commercial storage shed which expired on May 11, 2014. R8 (*Special Clinton District*).

PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street between 9th and 10th Avenue, Block 1054, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for an accessory parking lot to a commercial use, which expired on May 11, 2014; and

WHEREAS, a public hearing was held on this application on October 21, 2014, after due notice by publication in the *City Record*, and then to decision on November 25, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 45th Street, between Ninth Avenue and Tenth Avenue, within an R8 zoning district, within the Special Clinton District; and

WHEREAS, the site has 125 feet of frontage along West 45th Street, and 2,500 sq. ft. of lot area; it is occupied by a one-story storage shed, a one-story commercial building, two four-story commercial buildings, a seven-story commercial building, and an open parking area; and

WHEREAS, the site has been subject to the Board's jurisdiction since April 15, 1941, when, under BSA Cal. No. 1071-40-BZ, the Board authorized the parking of more than five motor vehicles contrary to use regulations; and

WHEREAS, this grant was subsequently amended and extended at various times; and

WHEREAS, the grant lapsed in 1996 and, on May 11, 2004, under the subject calendar number, the Board granted an application to re-establish the variance for a ten-year term to expire on May 11, 2014; and

WHEREAS, accordingly, the applicant now seeks to further extend the term of the grant for ten years; and

WHEREAS, at hearing, the Board directed the applicant to: (1) clarify the type of items stored in the storage shed; (2) discuss the minor discrepancies between the approved site plan and the existing conditions, including the width of the curb cut (as approved, 10'-0" in width; as built, 24'-0") and the height of the fence along the eastern boundary of the site (as approved, 6'-0" in height; as built, 4'-0"); and (3) stripe the parking lot; and

WHEREAS, as to the items in the storage shed, the applicant states that dry goods, such as boxes of film reels and cans are stored in the shed; and

WHEREAS, as to the discrepancies between the approved site plan and the existing conditions, the applicant states that the widened curb cut improves the movement of vehicles throughout the site and the shorter fence provides an adequate buffer between the site and the adjacent residential building; and

WHEREAS, as to the striping of the parking lot, the applicant represents that the striping will occur subsequent to the Board's extension of the term; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested amendment to the prior resolution with the conditions listed below.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, dated May 11, 2004, so that as amended the resolution reads: "to grant an extension of the special permit for a term of ten years from the prior expiration, to expire on May 11, 2024; on condition that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received November 12, 2014'-(1) sheet; and on further condition: *on condition*:

THAT this grant shall be limited to a term of ten years, to expire on May 11, 2024;

THAT the parking shall be striped in accordance with the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT the DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 103568827)

Adopted by the Board of Standards and Appeals, November 25, 2014.

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327-06-BZ

APPLICANT – Eric Palatnik, P.C., for 133 East 58th Street LLC, owner; Manhattan Sports Performance LLC, lessee.

SUBJECT – Application June 13, 2004 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation a physical culture establishment (*Velocity Performance Sports*) which expired September 1, 2014. C5-2 zoning district.

PREMISES AFFECTED –133 East 58th Street, between Lexington And Park Avenues, Block 1313, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a physical culture establishment (“PCE”), which expired on September 1, 2014; and

WHEREAS, a public hearing was held on this application on October 21, after due notice by publication in *The City Record*, and then to decision on November 25, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, has no objection to this application; and

WHEREAS, the subject site is located on the northwest corner of Lexington Avenue and East 58th Street; within a C5-2 zoning district; and

WHEREAS, the site is occupied by a 14-story commercial building; and

WHEREAS, the PCE occupies approximately 8,790 sq. ft. of floor area on the sixth floor; and

WHEREAS, the PCE is operated as a Velocity Performance Sports; and

WHEREAS, on August 21, 2007, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, the legalization of the PCE, for a term of seven years, to expire on September 1, 2014; and

WHEREAS, accordingly, the applicant now seeks a further extension of term; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 21, 2007, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration; on condition that any and all work shall substantially conform to drawings as they apply to the

objection above noted, filed with this application marked ‘Received November 12, 2014’-(2) sheets; and on further condition: *on condition*:

THAT this grant shall be limited to a term of ten years, to expire on September 1, 2024;

THAT any massages shall be performed only by New York State licensed massage professionals;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 25, 2014.

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.

SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district. PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 16, 2014, at 10 A.M., for decision, hearing closed.

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrachi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED –6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December

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16, 2014, at 10 A.M., for decision, hearing closed.

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (§73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

APPEALS CALENDAR

162-14-A

APPLICANT – Rampulla Associates Architects, for Lawrence O’Friel, owner.

SUBJECT – Application July 9, 2014 – Proposed construction of a single family detached home that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R1-2 zoning district.

PREMISES AFFECTED – 100 Giegerich Avenue, west side Giegerich Avenue 431.10’ to Minerva Avenue, Block 7796, Lot 11(tentative), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 12, 2014, acting on DOB Application No. 520196458, reads in pertinent part:

The proposed one family dwelling which does not front on a legally mapped street is contrary to Article 3, Section 36 of the General City Law; and

WHEREAS, this is an application to allow the construction of a detached, two-story, single-family home not fronting a mapped street contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on October 21, 2014, after due notice by publication in *The City Record*, to decision on November 25, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side

of Giegerich Avenue, approximately 430 feet south of Minerva Avenue, within an R1-2 zoning district, within the Special South Richmond Development District; and

WHEREAS, the site has approximately 125 feet of frontage along Giegerich Avenue and 32,877 sq. ft. of lot area;

WHEREAS, the applicant proposes to construct a detached, two-story, single-family home with 7,625 sq. ft. of floor area; the proposed home will front on Giegerich Avenue, an unmapped street with a width of 50 feet; and

WHEREAS, accordingly, the applicant requests a waiver of GCL § 36, which does not permit the construction of a building not fronting on a mapped street; and

WHEREAS, by letter dated August 25, 2014, the Fire Department states that it has reviewed the project and has no objections, provided the building is fully-sprinklered and a serviceable fire hydrant is located within 250 feet of the main front entrance of the home;

WHEREAS, the applicant notes that the building will be fully-sprinklered and that there is an existing fire hydrant on Giegerich Avenue, which will be 110 feet from the front door of the home; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject certain conditions.

Therefore it is Resolved, that the decision of the DOB, dated June 12, 2014, acting on DOB Application No. 520196458, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 31, 2014”-one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT 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 home will be fully-sprinklered;

THAT the main entrance to the home will be located 250 feet or less from the nearest fire hydrant;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals November 25, 2014.

665-39-A & 107-14-A

APPLICANT – Jesse Masyr, Esq/Fox Rothschild, for City Club Realty, LLC., owner.

SUBJECT – Application May 22, 2014 – Amendment to a previously approved waiver of a non-complying exit stair;

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and an Appeal filed pursuant to MDL Section 310(2)(a) proposed an addition to the existing building which will require a waiver of MDL Section 26(7) pursuant to Section 310. C6.45 SPD zoning district.

PREMISES AFFECTED – 55-57 West 44th Street, between 5th Avenue and Avenue of the Americas, Block 1260, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for continued hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for continued hearing.

245-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law, requesting that the Board vary several requirements of the MDL. R7B Zoning District

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

11-14-A thru 14-14-A

APPLICANT – Sheldon Lobel, P.C., for Trimountain LLC, owner.

SUBJECT – Application January 22, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district.

PREMISES AFFECTED – 47-04, 47-06, 47-08 198th Street, south side of 47th Avenue between 197th Street and 198th Street, Block 5617, Lot 34, 35, 36, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for continued hearing.

163-14-A thru 165-14-A

APPLICANT – Ponte Equities, for Ponte Equities, Ink, owner.

SUBJECT – Application July 10, 2014 – Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A zoning district.

PREMISES AFFECTED – 502, 504, 506 Canal Street, Greenwich Street and Canal Street, Block 595, Lot 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

ZONING CALENDAR

42-14-BZ

CEQR #14-BSA-124M

APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.

SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.

PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 20, 2014, acting on DOB Application No. 121662664, reads, in pertinent part:

ZR 32-15 – Proposed Physical Culture

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Establishment at zoning C1-8X is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-8X zoning district, the legalization of a physical culture establishment (“PCE”) on the cellar, first and second floor of a five story mixed residential and commercial use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in the *City Record*, with a continued hearing on October 28, 2014, and then to decision on November 25, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown and Vice Chair Hinkson; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Lexington Avenue and East 61st Street; it is located within a C1-8X zoning district; and

WHEREAS, the site has 80 feet of frontage along East 61st Street and 40.42 feet of frontage along Lexington Avenue, consisting of 3,234 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story mixed residential and commercial building; and

WHEREAS, the PCE occupies 3,060 sq. ft. of floor area at the cellar, first floor, and second floor of the building and operates as Lush Cosmetics; and

WHEREAS, the PCE’s hours of operation are Monday through Saturday, from 10:00 a.m. to 9:00 p.m., and on Sunday, from 11:00 a.m. to 8:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, at hearing, the Board noted that the application, initially brought as an application to operate a PCE, was for the legalization of an existing PCE, and expressed concern that the signage displayed by the PCE was not in compliance with applicable regulations; and

WHEREAS, in response, the applicant recast the application as a legalization and represented that any signage would be in compliance with applicable regulations;

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA124M, dated March 11, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-8X zoning district, the operation of a PCE on the cellar, first story, and second story of a 5-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked “November 13, 2014”- Five (5) sheets; *on further condition*:

THAT the term of the PCE grant will expire on January 1, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all signage displayed at the site by the applicant shall conform to applicable regulations;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT 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 November 25, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 25, 2014.

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78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for decision, hearing closed.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for decision, hearing closed.

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.

SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility.

Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for decision, hearing closed.

328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.

SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to legalize the operation of physical culture establishment (*Brooklyn Athletic Club*) on the cellar, first, second, and third floors in a five-story building. M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for decision, hearing closed.

38-14-BZ

APPLICANT – Eric Palatinik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

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45-14-BZ

APPLICANT – Eric Palatnik, P.C., for Athina Orthodoxou, owner.

SUBJECT – Application March 18, 2014 – Special Permit (§73-622) to enlarge an existing semi-detached two story dwelling and to vary the floor area ratio requirements, and to convert the one family home into a two family home. R4-1 zoning district.

PREMISES AFFECTED – 337 99th Street, between 3rd and 4th Avenues, Block 6130, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

115-14-BZ

APPLICANT – Eric Palatnik, P.C., for Suzanne Bronfman, owner; T. Kang Taekwondo USA, Ink., lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to legalize for a physical culture establishment (*T.Kang Tae Kwon Do*) on the cellar and first floor in an existing building. C6-2A zoning district.

PREMISES AFFECTED – 85 Worth Street aka 83 Worth Street, between Church Street and Broadway, Block 173, Lot 2, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for decision, hearing closed.

122-14-BZ

APPLICANT – Lewis E Garfinkel, for Ariel Boiangiu, owner.

SUBJECT – Application October 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home contrary to floor area and open space ZR 23-141; side yards ZR 23-461 and less than the required rear yard ZR 23-47.

R2 zoning district.

PREMISES AFFECTED – 1318 East 28th Street, west side of 28th Street 140 feet of Avenue M, Block 7663, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

141-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP., for 24655 Broadway Associates, owner; Soul Cycle 2465 Broadway, LLC, lessee.

SUBJECT – Application June 23, 2014 – Special Permit (§73-36) to allow a physical culture establishment

(*SoulCycle*) on the first floor of an existing commercial building, contrary to (§32-31). C4-6A zoning district.

PREMISES AFFECTED – 2465 Broadway, east side of Broadway, 50ft. south of intersection of West 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 25, 2014

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.

ZONING CALENDAR

166-14-BZ

CEQR #15-BSA-026M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 12 West 27 Land, LP, owner; SoulCycle 27th Street, LLC, lessee.

SUBJECT – Application July 10, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*SoulCycle*) within portion of an existing mixed use building. M1-6 zoning district.

PREMISES AFFECTED – 12 West 27th Street, southside of West 27th Street, 60.5 feet west of Broadway, Block 828, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 3, 2014, acting on DOB Application No. 122037474, reads, in pertinent part:

ZR 42-10 – Proposed Physical Culture Establishment at zoning M1-6 is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district and also within the Madison Square North Historic District, a physical culture establishment (“PCE”) on the cellar and first floor of an eighteen-story mixed use building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 25, 2014, after due notice by publication in the *City Record*, and then to decision on

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November 25, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice Chair Hinkson; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 27th Street, between Avenue of the Americas and Broadway, in an M1-6 zoning district within the Madison Square North Historic District; and

WHEREAS, the site has 50 feet of frontage along West 27th Street and 4,938 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 18-story mixed residential and commercial building; and

WHEREAS, the PCE occupies 3,068 square feet of floor space at the cellar and 3,340 square feet of floor area on the first floor, with a total floor space of 6,408 square feet, and operates as SoulCycle Cosmetics; and

WHEREAS, the PCE's hours of operation are Monday through Saturday, from 5:30 a.m. to 11:00 p.m., and on Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect No. 16-1936, issued on August 27, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No.15BSA026M, dated July 10, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental

Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, within the Madison Square North Historic District, the operation of a PCE on the cellar and first story of an 18-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to drawings filed with this application marked "November 20, 2014"- Four (4) sheets; *on further condition*:

THAT the term of the PCE grant will expire on November 25, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT 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 November 25, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 25, 2014.

125-14-BZ

APPLICANT – Goldman Harris LLC, for 350 East Houston LLC c/o BLDG Management Inc., owner.

SUBJECT – Application June 5, 2014 – Variance (§72-21) to facilitate the construction of a ten-story mixed-use forty - six (46) residential dwelling units and retail on the ground floor and cellar. R8A zoning district.

PREMISES AFFECTED –11 Avenue C, between East 2nd Street & East Houston Street, Block 384, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

Ryan Singer, Executive Director

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CORRECTION

This resolution adopted on October 7, 2014, under Calendar No. 300-12-BZ and printed in Volume 99, Bulletin Nos. 40-41, is hereby corrected to read as follows:

300-12-BZ

CEQR #13-BSA-049M

APPLICANT – Davidoff Hutter & Citron LLP, for Columbia Grammar & Preparatory School, owner.

SUBJECT – Application October 19, 2012 – Variance (§72-21) to permit an enlargement of an existing school building (*Columbia Grammar and Preparatory*), contrary to lot coverage (§24-11), permitted obstruction (§24-33), rear yard equivalent (§24-382), initial setback distance (§24-522), height (§23-692), and side yard (§24-35(b)) regulations. R7-2 zoning district.

PREMISES AFFECTED – 36 West 93rd Street aka 33 West 92nd Street, between Central Park West and Columbus Avenue, Block 1206, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 1, 2013, acting on Department of Buildings Application No. 121161857, reads in pertinent part:

1. ZR 24-11 - The lot coverage proposed exceeds that permitted.
2. ZR 24-382 - Provide the required minimum rear yard equivalent. The project site is a through lot, with a depth in excess of 180'-0".
3. ZR 24-33 - Only a (1) one story building portion, with a maximum height of 23'-0", is allowed as a permitted obstruction in a rear yard equivalent. The proposed building envelope indicates two stories and a mechanical space in the rear yard equivalent.
4. ZR 24-522 - The building envelope does [not] meet the initial setback requirement.
5. ZR 23-692 - The frontage on 92nd Street is less than 45'-0" in width. The proposed street-wall is higher than the width of the narrow street and higher than the lowest abutting building.
6. ZR 24-35B The proposed side yard, at the new vertical extension, is less than the required 8'-0"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-2 zoning district within the Upper West Side/Central Park West Historic District, the

enlargement of an existing school building, which does not comply with zoning regulations for lot coverage, permitted obstruction, rear yard equivalent, encroachment into the required initial setback distance, width and height of street wall, and side yard, contrary to ZR §§ 24-11, 24-382, 24-33, 24-522, 23-692, and 24-35; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with a continued hearing on August 19, 2014, and then to decision on October 7, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends disapproval of the application; and

WHEREAS, certain members of the community testified at the hearing and provided testimony in opposition to the application (collectively, the "Opposition"), citing primary concerns about traffic generated by the school and construction disturbance; other concerns from a shareholder at 36 West 93rd Street include that there are inconsistencies between the subject application and a 2008 variance application for the School, specifically as related to the School's needs; and

WHEREAS, certain members of the community, the West Side Organization for Responsible Development ("WORD"), represented by counsel, cited concerns about traffic associated with the school and construction disturbance and requested the following conditions for any approval: (1) the School continue to work with the community to address traffic concerns and provide a written traffic plan; (2) the School provide a traffic, noise, and pollution baseline report prior to the Board's decision; (3) the School commit to not increasing enrollment by more than 30 students over the next ten years; (4) the School ensure that all construction is performed during the summer, and only on weekdays between the 9:00 a.m. and 5:00 p.m.; (5) the School provide the Board with a site logistics plan and construction calendar prior to a final resolution; (6) the rooftop not be used as a play area; and (7) that the community be consulted prior to installation of the rooftop HVAC systems, which must include sufficient sound mitigation; and

WHEREAS, this application is brought on behalf of Columbia Grammar & Preparatory School (the "School"), a nonprofit educational institution founded in 1764, which serves students from grades pre-kindergarten through 12; and

WHEREAS, the subject site is an interior through lot with frontage on West 93rd Street and West 92nd Street between Central Park West and Columbus Avenue, within an R7-2 zoning district within the Upper West Side/Central Park West Historic District; and

WHEREAS, the site is currently occupied by a five-story building with a sub-cellar and cellar constructed in 1996; the building includes 13 classrooms and ancillary facilities for students in grades 5 and 6, 12 high school classrooms, and several shared spaces, including two dining areas and four art

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studios/technology classrooms; and

WHEREAS, the applicant notes that the School also occupies several other buildings in the vicinity: the lower division (pre-kindergarten through grade 4) occupies five interconnected brownstones on West 94th Street and 5 West 93rd Street, directly behind the brownstones; and the upper division (grades 7 through 12) occupies 4 West 93rd Street; and

WHEREAS, the School proposes to (1) build out an existing setback area at the West 92nd Street frontage at existing floors three and four; (2) build out an existing setback area at the West 93rd Street frontage at the existing fifth floor; and (3) add two new floors so that, upon completion, the building will consist of a sub-cellar, cellar and seven floors above grade; and

WHEREAS, the enlarged building will include ten additional middle school classrooms for a total of 23 classrooms, an additional art/technology studio and a library for the middle school, in addition to new space for faculty and administration offices; and

WHEREAS, while certain portions of the enlarged building will still be used by high school students (the cellar/first floor level will be occupied by high school classrooms and dining, half of the second floor will be high school classrooms and the third floor will contain shared art studios and technology classrooms), the number of high school classrooms will be reduced from 12 to eight and upper floors four through seven will be occupied solely by the middle school; and

WHEREAS, the applicant proposes to increase the building height from 68 feet to 95 feet, excluding rooftop bulkheads and mechanical space; increase the floor area from 28,187 sq. ft. (3.37 FAR) to 40,778 sq. ft. (4.88 FAR) (54,301 sq. ft. (6.50 FAR) is the maximum permitted); and

WHEREAS, because the enlargement does not comply with the applicable bulk regulations in the subject zoning district, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic need to create a self-contained middle school and alleviate overcrowding in the high school building; and

WHEREAS, specifically, the applicant notes that the relocation of the seventh graders to the new building will free up space at the high school building; and

WHEREAS, the School also proposes to increase enrollment by 30 students which is still substantially below the demand for new admissions; and

WHEREAS, the applicant states that the proposed enlargement would result in 151 sq. ft. of space per student compared to the average new middle school in the region which provides 178.3 sq. ft. per student and 216.7 sq. ft. per high school student; and

WHEREAS, the applicant states that the proposed floor area to be added to the existing building is required to fulfill the School's longstanding goal of having a self-contained middle division consisting of grades five through seven; and

WHEREAS, the applicant asserts that the existing

building is too small to accommodate the organization of the school with lower, middle and upper divisions, as it was not designed to accommodate the necessary classrooms and ancillary space needed for a middle division; and

WHEREAS, the applicant asserts that the School is one of the last public or private schools in New York City with grades pre-kindergarten through 12 that does not have a separate middle school; and

WHEREAS, the applicant asserts that in the years since the School's facilities were developed, educators have come to recognize the benefits of grouping grades kindergarten through 12 into lower, middle and upper schools; and

WHEREAS, however, the applicant states that the School's space limitations have required it to maintain grades five and six in the existing building at the subject site as the final two years of its grammar school division and to house grade seven in its high school building; and

WHEREAS, the applicant notes that the proposed floor area is significantly less than the maximum allowed for the underlying zoning district; and

WHEREAS, the applicant asserts that the proposed encroachment into the existing rear yard equivalent (above the 23-ft. height for a permitted obstruction), combined with the build-out of the existing setback on West 93rd Street and the two additional floors above the West 92nd Street portion of the building, allows the school to create a rational design for the additional classrooms and ancillary facilities while minimizing the proposed height of the enlarged building to seven stories; and

WHEREAS, the applicant asserts that practical difficulties arise in complying strictly with the underlying bulk regulations; and

WHEREAS, additionally, the applicant asserts that the unique features affecting the site include (1) the lot's narrowness and odd shape with its varying frontages on West 92nd Street and West 93rd Street and (2) the existing building's unique footprint, configuration and structural support system; and

WHEREAS, as to the lot size and shape, the applicant notes that it has 45 feet of frontage along West 93rd Street and widens by approximately five feet at its eastern property line, then narrows at the midblock, and the property line runs slightly diagonal towards West 92nd Street where it has frontage of 35 feet; and

WHEREAS, further, the applicant states that the footprint of the existing under-built building reflects the inability to use space that would have been available in a more typical square-shaped lot; and

WHEREAS, the applicant states that the existing building's constraints require that the enlargement be constructed within the required setback area along West 93rd Street and within the rear yard equivalent, as well as above the 23-ft. tall portion of the building along West 92nd Street, thereby exceeding the maximum permitted lot coverage; and

WHEREAS, the applicant notes that the required sky exposure plane would be encroached into by 7'-7" along the West 93rd Street façade at the fifth and sixth floors due to the

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inclusion of a middle school library at the fifth floor and two new classrooms at the sixth floor; and

WHEREAS, the applicant asserts that if the street wall on West 93rd Street were to set back to comply with the 7'-7" sky exposure plane encroachment, it would effectively eliminate the proposed rooms because their depth would be too narrow (with the presence of the existing elevator and stairwell); and

WHEREAS, the applicant asserts that the proposed location of the majority of the additional proposed floor area along West 93rd Street is driven in part by the existing building's structural support system; the applicant's architect and engineer state that the load capacity for the addition along West 93rd Street is designed to be distributed across both building sections to be supported by the building's existing column and foundation support system; and

WHEREAS, the applicant represents that its development team reviewed the possibility of shifting the proposed floor area from the West 93rd Street portion of the building to the West 92nd Street frontage, and determined that the existing transfer beams in the West 92nd Street portion of the building are already very close to their allowable stress level; and

WHEREAS, further, the applicant states that the relocation of the floor area is programmatically problematic since the building narrows along West 92nd Street, which does not accommodate sufficiently-sized classrooms; and

WHEREAS, finally, the applicant states that a major piece of mechanical equipment must be located in the proposed fourth floor addition, and its required air intake and discharge would be directed toward the "open" area on that floor; and

WHEREAS, accordingly, the applicant states that the propose enlargement most effectively meets the School's programmatic needs; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School along with the existing constraints of the site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the site is located within the West Side Urban Renewal Area and the existing building was limited, in 1996, by the then-applicable West Side Urban Renewal Plan controls affecting the site, which were more restrictive than the applicable zoning bulk regulations (the West Side Urban Renewal Plan was established in 1962 and expired in 2002); and

WHEREAS, because the site is within the Upper West Side/Central Park West Historic District, the applicant has obtained a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC"), dated September 18, 2013 and amended January 14, 2014; and

WHEREAS, the applicant cites to LPC's designation report which states that the area's residential buildings range from three-, four-, and five-story row houses, to twelve- to seventeen-story multiple dwellings and also include eight- to twelve-story apartment hotels and studio buildings that are on both the avenues as well as streets; and

WHEREAS, additionally, the applicant cites to LPC's recognition that the Upper West Side is characterized by a variety of institutional buildings intended to meet the social, educational, and religious needs of neighborhood residents; and

WHEREAS, the applicant also cites to the Certificate of Appropriateness which states that "...the proposed additions will not cause damage to [the] historic fabric or any significant historic features of the district; that the construction of rooftop additions on this through-lot building will result in an overall building height that relates to the taller surrounding buildings; that the geometry of the addition, which raises the street wall two floors on West 93rd Street with set-back addition and two floors on West 92nd Street, will be compatible with the massing of other institutional buildings in this historic district..."; and

WHEREAS, the applicant asserts that the height and bulk of the proposed enlarged school building will be in context with the nearby buildings on the north and south sides of both West 92nd Street and West 93rd Street; and

WHEREAS, specifically, the applicant cites to 50 West 93rd Street to the west, which is eight stories, and 70 West 93rd Street, which is 31 stories; to the east of the high school building is 2 West 93rd Street with 16 stories and 325 Central Park West with 16 stories; and on the north side of West 92nd Street there are One West 92nd Street with 15 stories, 7 West 92nd Street with seven stories, 35 West 92nd Street, with 13 stories, and 73 West 92nd Street with 31 stories; on the north side of West 93rd Street to the west there is 37 West 93rd Street with eight stories and 689 Columbus Avenue with 16 stories; and to the east on the north side of West 93rd Street, 333 Central Park West with 12 stories; and

WHEREAS, in response to concerns raised by the Community Board regarding the potential impact on the light

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and air to the immediately adjacent buildings along West 92nd Street, the proposed fourth floor (which contains mechanical equipment) has been reduced in depth to be located closer to West 92nd Street, and the proposed third floor roof has been sloped along the sides to allow additional light and air to the adjacent neighbors; and

WHEREAS, in response to the Opposition's concerns, the applicant asserts first that the traffic concerns associated with the School exist now and will not be exacerbated by the proposed enlargement of the building; and

WHEREAS, the applicant represents that its traffic consultant is conducting additional field observations and will develop additional recommendations to address the traffic concerns including whether it would be helpful to install a red light camera and left turn traffic signal at West 93rd Street and Central Park West or closing West 93rd Street to traffic during peak times; and

WHEREAS, the School states that it is committed to developing a comprehensive traffic plan for review and comment from the community and agrees to continue to work with the community to try to resolve existing traffic issues; the School commits to participating in a working group with representatives from WORD to ensure safe traffic and pedestrian conditions; and

WHEREAS, the applicant states that it considered several other suggestions which it concluded were not feasible such as student drop-off on Columbus Avenue, including staggered drop-off and pick-up times, student shuttles from offsite, and drop-off on West 92nd Street; and

WHEREAS, in response to the Opposition's proposed conditions, the School states that (1) it will establish a traffic plan in consultation with WORD, with whom it will meet on an ongoing basis to focus on traffic concerns and that it will coordinate with the Department of Transportation; (2) it has complied fully with CEQR requirements and that noise, traffic, and air quality analyses were not triggered by the proposal; (3) it proposes to add 30 students, but will not agree to cap enrollment; (4) it will strive to complete construction during the summer, only on weekdays and during business hours but notes the possibility of unforeseen delays which may require additional time; (5) it cannot produce a site logistics plan and construction calendar at this point in the process; (6) it does plan to use the sixth-floor rooftop for a play area but will fence and buffer it as well as limit the hours to school hours not to be later than 5:00 p.m.; and (7) the rooftop mechanicals will occupy the fourth-floor roof and will include an acoustical enclosure, all of which is subject to LPC approval; and

WHEREAS, finally, as to the Opposition's concerns about inconsistencies between the subject application and the 2008 variance application, the applicant states that numerous circumstances have changed since the 2008 application, which should be viewed independently from the subject application and that all current and prior claims were credible, based on the respective circumstances; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the

surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions of the North Building and the South Building; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, as noted, the applicant revised the plans to provide additional setback and slope at the fourth and third floor, respectively; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, 13BSA049M dated October 12, 2012; and

WHEREAS, the EAS documents that the operation of the School would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R7-2 zoning district within the Upper West Side/Central Park West Historic District, the enlargement of an existing school building, which does not comply with zoning regulations for lot coverage, permitted obstruction, rear

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yard equivalent, encroachment into the required initial setback distance, width and height of street wall, and side yard, contrary to ZR §§ 24-11, 24-382, 24-33, 24-522, 23-692, and 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received October 3, 2014”– fourteen (14) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a floor area of 40,778 sq. ft. (4.88 FAR) and total height of 95 feet, exclusive of bulkheads, as illustrated on the BSA-approved plans;

THAT the School will establish a traffic plan to improve traffic flow at the site, in a timely manner; measures, in consultation with the community working group, may include a red light camera and left turn traffic signal, among other measures;

THAT fencing and buffering will be installed around the sixth-floor rooftop play area, which will have hours not to exceed school hours and no use after 5:00 p.m.;

THAT the use of the fourth-floor rooftop will be limited to mechanical systems accessible for maintenance/service-related work, will comply with all Noise Code requirements, and will include an acoustical enclosure for the generator;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

THAT construction will proceed in accordance with ZR § 72-23;

THAT all construction will be in conformance with the LPC Certificate of Appropriateness, dated September 18, 2013 and amended January 14, 2014;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 7, 2014.

The resolution has been amended to correct part of the SUBJECT which read “rear yard equivalent (§24-332)”...now reads: “rear yard equivalent (§24-382)”. Corrected in Bulletin No. 48, Vol. 99, dated December 3, 2014.

BULLETIN

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December 18, 2014

DIRECTORY

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DOCKETS

New Case Filed Up to December 9, 2014

317-14-BZ

3780-3858 Nostrand Avenue, Westerly side of Nostrand Avenue extending the entire length of the blockfront between Avenue Y and Avenue Z, Block 7445, Lot(s) 1, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district C2-2/R4 district.

318-14-BZ

1672-1680 86th Street, South East Corner of Bay 14th Street, Block 6365, Lot(s) 33, Borough of **Brooklyn, Community Board: 11**. Re-Instatement (§11-411) proposed reinstatement of the variance for the gasoline service station and the accessory parking facility which was granted under Cal.No 284-42-BZ & 978-65-BZ, located within an C1-2 in R5 zoning district. C1-2 in R5 district.

319-14-BZ

1781 South Avenue, Located within West Shore Plaza 1745-1801 South Avenue, Block 2800, Lot(s) 37, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to permit the legalization of an Physical Culture Establishment (PCE) UFC Gym, located within an C43 zoning district. C43 district.

320-14-A

125 West 97th St., Between Amsterdam Avenue and & Columbus Avenue, Block 1852, Lot(s) 5, Borough of **Manhattan, Community Board: 7**. Interpretative Appeals: re: open space regarding the space requirements on the zoning lot for a proposed nursing facility to constructed by Jewish Home Life care on West 97sath St, located within an R7-2/C1-8 zoning district R7-2/C1-8 district.

321-14-BZ

2331 Eastchester Road, Located approximately 50 feet of the intersection formed by Waring Avenue and Eastchester Road, Block 4392, Lot(s) 40, Borough of **Bronx, Community Board: 11**. Special Permit (§73-125): to permit an ambulatory diagnostic or treatment health care facility within the existing building, located in a R4A zoning district. R4A 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

JANUARY 6, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 6, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

248-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Moshe Benefeld, owner.

SUBJECT – Application August 23, 2014 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area and open space (23-141a); side yards (23-461). R2 zoning district.

PREMISES AFFECTED – 1179 East 28th Street, east side of East 28th Street, approximately 127' north of Avenue L, Block 7628, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

41-14-BZ

APPLICANT –The Law Office of Jay Goldstein, for United Talmudical Academy, owner.

SUBJECT – Application March 7, 2014 – Special Permit (§73-19) to legalize an existing school/yeshiva (UG 3). M1-2 zoning district.

PREMISES AFFECTED – 21-37 Waverly Avenue aka 56-58 Washington Avenue, between Flushing Avenue and Park Avenue front both Washington and Waverly Avenues, Block 1874, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #2BK

146-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Fair Only Real Estate Corps., owner; LES Fitness LLC., lessee.

SUBJECT – Application June 23, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Bowery CrossFit*) in the cellar of an existing building. C6-1G zoning district.

PREMISES AFFECTED – 285 Grand Street, south side of Grand Street approximately 25' west of the intersection formed by Grand Street and Eldridge Street, Block 306, Borough of Manhattan.

COMMUNITY BOARD #3M

201-14-BZ

APPLICANT – Frank Angelino, Esq., for Joseph Pogostin, owner; New Fitness of 3rd Avenue, Bronx, LLC., lessee.

SUBJECT – Application August 22, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*) on the ground floor of an existing one-story and cellar commercial building. M1-1/R7-2 zoning district.

PREMISES AFFECTED – 3524 Third Avenue, northeast corner of East 168th Street, Block 2610, Lot 1, Borough of Bronx.

COMMUNITY BOARD #3BX

Ryan Singer, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, DECEMBER 9, 2014
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson,
Commissioner Ottley-Brown and Commissioner Montanez

SPECIAL ORDER CALENDAR

698-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application May 21, 2014 – Amendment of a previously approved variance to permit the conversion of the convenience store to a relocate and re-size curb cuts and to legalize the existing remediation equipment and location of the tanks and permit additional trees on the site. C2-2 zoning district.

PREMISES AFFECTED – 2773 Nostrand Avenue, northeast corner of Kings Highway and Nostrand Avenue, Block 7684, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening of a variance and an amendment to permit, on a site within an R4 (C2-2) zoning district, the conversion of the building for a gasoline service station (Use Group 16) to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a triangular lot located on the northeast corner of the intersection of Nostrand Avenue and Kings Highway, within an R4 (C2-2) zoning district; and

WHEREAS, the site has 170.95 feet of frontage along Nostrand Avenue, 261.44 feet of frontage along Kings Highway, and 16,835 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 2,520 sq. ft. of floor area (0.15 FAR); the building is occupied by a gasoline service station (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over

the site since March 22, 1960, when, under the subject calendar number, it granted an application to permit reconstruction of an existing gasoline service station contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, the grant has been amended twice (in 1983 and 1987) to allow various site changes; and

WHEREAS, the applicant now seeks an amendment to permit the following: (1) the conversion of the one-story building at the site to an accessory convenience store; (2) the installation of a trash enclosure, parking stalls and a walkway in front of the store; (3) the relocation and closure of certain curb cuts; and (4) the planting of eight street trees along the frontages; and

WHEREAS, in addition, the applicant seeks approval for minor site plan modifications to reflect as-built conditions, including changes in the location of the gasoline tanks and remediation equipment; and

WHEREAS, the applicant notes that the proposal complies with DOB Technical Policy and Procedure Notice No. 10/1999, which sets forth the requirements for convenience stores accessory to gasoline and automotive service stations; and

WHEREAS, at hearing, the Board directed the applicant to: (1) clarify the status of remediation under New York State Department of Environmental Conservation (“DEC”) Spill No. 02-07518 (the “spill”); (2) submit an amended plan to reflect all as-built conditions and to clarify the site circulation plan; and (3) clarify the proposed hours of operation for the convenience store; and

WHEREAS, in response, as to the spill, the applicant represents that active remediation at the site has ceased but groundwater monitoring continues; and

WHEREAS, the applicant also submitted an amended site plan that reflects all as-built conditions; and

WHEREAS, as to the hours of operation, the applicant states that the convenience store will operate 24 hours per day, seven days per week; and

WHEREAS, based on its review of the record, the Board finds that the requested amendments are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 22, 1960, so that as amended the resolution reads: “to permit the noted modifications; *on condition* that all work shall substantially conform to drawings, filed with this application marked ‘Received November 5, 2014’– (7) sheets; and on further condition:

THAT the building shall have a maximum of 2,520 sq. ft. of floor area (0.15 FAR);

THAT the site shall be maintained free of debris and graffiti;

THAT signage shall be in accordance with C2 regulations;

THAT landscaping and buffering shall be maintained in accordance with the BSA-approved plans;

THAT lighting shall be directed downward and away from adjoining residences;

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THAT the above conditions shall be noted in the Certificate of Occupancy;

THAT the remediation of the spill shall be in accordance with DEC requirements;

THAT a certificate of occupancy shall be obtained by December 9, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 320782159)

Adopted by the Board of Standards and Appeals, December 9, 2014.

822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC., owner.

SUBJECT – Application January 9, 2014 – Amendment (§11-412) to convert existing automotive service bays into an accessory convenience store and enlarge the accessory building at an existing gasoline service station. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, southwest corner of Victory Boulevard and Manor Road, Block 709, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening of a variance and an amendment to permit, on a site within an R3-2 (C2-1) zoning district, the conversion of automotive service bays within a gasoline service station (Use Group 16) to an accessory convenience store, the enlargement of the service station building, the construction of an additional fuel dispenser, and other minor modifications to the site plan; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island,

recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of Victory Boulevard and Manor Road, within an R3-2 (C2-1) zoning district; and

WHEREAS, the site has 127.49 feet of frontage along Victory Boulevard, 100 feet of frontage along Manor Road, and 14,068 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 1,797 sq. ft. of floor area (0.13 FAR); the building is occupied by a gasoline service station (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the site since June 7, 1960, when, under the subject calendar number, it granted an application to permit reconstruction of an existing gasoline service station contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, the grant has been amended at various times to allow modifications to the site and the building; and

WHEREAS, the applicant now seeks an amendment to permit the following: (1) the conversion of automotive service bays to an accessory convenience store; (2) the enlargement of the existing building from 1,797 sq. ft. of floor area (0.13 FAR) to 2,451 sq. ft. of floor area (0.17 FAR); (3) the narrowing and relocation of the curb cut along Manor Road; (4) the narrowing of the curb cut along Victory Boulevard; and (5) the installation of self-service air and vacuum stations; and

WHEREAS, the Board may, pursuant to ZR § 11-412, permit an enlargement to an existing use authorized by a variance under the 1916 Zoning Resolution, provided that such enlargement: (1) is limited to the zoning lot that was granted a variance prior to December 15, 1961; and (2) does not exceed 50 percent of the floor area of the building occupied by the use on December 15, 1961; and

WHEREAS, the applicant represents and the Board acknowledges that the proposal is within the limitations set forth in ZR § 11-412; and

WHEREAS, the applicant also notes that the proposal complies with DOB Technical Policy and Procedure Notice No. 10/1999, which sets forth the requirements for convenience stores accessory to gasoline and automotive service stations; and

WHEREAS, at hearing, the Board directed the applicant: (1) shift the Victory Boulevard curb cut so that it is outside the crosswalk and clarify that it complies with Department of Transportation (“DOT”) requirements; (2) provide details regarding the proposed landscaping and buffering of the site; (3) clarify that the proposed signage complies with the C2 regulations; (4) detail the proposed rear façade and provide a buffer of evergreen trees; (5) relocate the air and vacuum stations to the eastern portion of the site; (6) clarify the site circulation plan; and (7) provide appropriate sound attenuation for the proposed HVAC equipment; and

WHEREAS, in response, the applicant shifted the curb cut and submitted a letter from an engineer certifying that the relocated curb cut complies with DOT regulations; and

WHEREAS, as to the proposed landscaping, buffering, signage, rear façade, vacuum and air stations, and site

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circulation plan, and sound attenuation measures for the HVAC equipment, the applicant submitted amended plans responding to the Board's concerns; and

WHEREAS, based on its review of the record, the Board finds that the requested amendments are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 7, 1960, so that as amended the resolution reads: "to permit the noted modifications; *on condition* that all work shall substantially conform to drawings, filed with this application marked 'Received November 25, 2014'-(6) sheets; and on further condition:

THAT the building shall have a maximum of 2,451 sq. ft. of floor area (0.17 FAR);

THAT the site shall be maintained free of debris and graffiti;

THAT signage shall be in accordance with C2 regulations;

THAT landscaping and buffering shall be maintained in accordance with the BSA-approved plans;

THAT lighting shall be directed downward and away from adjoining residences;

THAT the above conditions shall be noted in the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained by December 9, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 520146217)

Adopted by the Board of Standards and Appeals, December 9, 2014.

203-92-BZ

APPLICANT – Jeffrey Chester, Esq., for Mowry Realty Associates LLC., The Fitness Place Forest Hills NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Lucille Roberts Gym*), which expired on March 1, 2014. C2-3(in R5D) zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side of Austin Street between 70th Avenue and 70th Road, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted special permit for a physical culture establishment ("PCE"), which expired on March 1, 2014; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Austin Street, 333 feet west of 71st Avenue, within an R5D (C2-3) zoning district; and

WHEREAS, the site is occupied by a two-story building with approximately 27,200 sq. ft. of floor area; and

WHEREAS, the PCE is operated as a Lucille Roberts and occupies approximately 7,500 sq. ft. of floor area on the first story and approximately 5,320 sq. ft. of floor space in the cellar; and

WHEREAS, the site has been subject to the Board's jurisdiction since May 3, 1983, when, under BSA Cal. No. 869-82-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit, on a site within a C8-2 zoning district, the operation of a PCE for a term of five years, to expire on May 3, 1988; the term of this grant expired and was not renewed; and

WHEREAS, subsequently, on March 1, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit, on a site within a C8-2 zoning district, the re-establishment of a PCE in the subject building for a term of ten years, to expire on March 1, 2004;

WHEREAS, the applicant notes that, in 2009, the site was rezoned from C8-2 to R5D (C2-3); and

WHEREAS, on September 12, 2006, the Board renewed the term of the grant under the subject calendar number for a term of ten years, to expire on March 1, 2014; and

WHEREAS, the applicant now seeks an extension of the term; and

WHEREAS, at hearing, the Board directed the applicant to: (1) revise the plans to include notes regarding the approved fire alarm system; (2) include a fire safety plan; (3) provide a copy of the Place of Assembly certificate of operation application; and (4) demonstrate that the accessory signs for the PCE are non-conforming; and

WHEREAS, in response, the applicant submitted the following: (1) revised plans with notes regarding the fire alarm system; (2) a revised statement describing the fire safety

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plan for the PCE; and (3) a copy of the place of assembly certificate of operation application; and

WHEREAS, as to the non-conforming accessory signs, the applicant provided copies of the sign permit application signoffs from 1998, which was prior to the rezoning of the site in 2009 from C8-2 to R5D (C2-3); the applicant asserts that these signoffs demonstrate that the signs are lawful, non-conforming signs; and

WHEREAS, based upon its review of the record, the Board finds that requested extension of term is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 1, 1994, so that as amended the resolution shall read: “to grant an extension of the special permit for a term of ten years from the expiration of the prior grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked “Received October 28, 2014”– (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, to expire on March 1, 2024;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all required permits, including the place of assembly certificate of operation shall be obtained and all required work shall be performed by December 9, 2015;

THAT a new certificate of occupancy shall be obtained within by December 9, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 420947827)

Adopted by the Board of Standards and Appeals, December 9, 2014.

545-56-BZ

APPLICANT – Eric Palatnik, P.C., for Williamsbridge Road Realty corporation, owner.

SUBJECT – Application June 12, 2014 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired October 19, 2012; Waiver of the Rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001-2007 Williamsbridge Road aka 1131 Neil Avenue, southeast corner of Williamsbridge

Road and Neil Avenue, Block 4306, Lot 20, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to February 3, 2015, at 10 A.M., for continued hearing.

195-02-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for McDonald's Real Estate Company, owner; Lauren Enterprises, lessee.

SUBJECT – Application December 2, 2013 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility with a legalization of a small addition to the establishment, which expired on February 11, 2013; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, between Drew and Ruby Streets, Block 4471, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

318-06-BZ

APPLICANT – Eric Palatnik, LLP for Sun Company Inc. (R&M), owner.

SUBJECT – Application August 9, 2013 – 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 22, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on November 22, 2007; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, Noreast corner of Astoria Boulevard and 49th Street. Block 1000, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

61-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP., for Guido Passarelli, Trustee, owner.

SUBJECT – Application April 18, 2014 – Proposed construction of a two-story two family dwelling located within the bed of unmapped street, contrary to Article 3 Section 36 of the General City law. R3X (SRD) zoning district.

PREMISES AFFECTED – 11 Massachusetts Street South, southeast corner of intersection of Hylan Boulevard and Massachusetts Street, Block 7936, Lot 3(tentative), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March, 21, 2014 acting on DOB Application No. 520147831, reads in pertinent part:

The street giving access to the proposed building is not duly placed the official map of the City of New York, therefore,

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2008 Building Code; and

WHEREAS, this is an application to allow the construction of a two-story, two-family building not fronting a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on October 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on December 9, 2014, hearing closed, and then to decision on same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Hylan Boulevard and Massachusetts Street South, within an R3X (SRD) zoning district; and

WHEREAS, the applicant proposes to construct a two-story, two-family dwelling on the site; and

WHEREAS, the applicant represents that the site’s only frontage is an unmapped portion of Massachusetts Street South; as such, the applicant seeks a waiver of GCL § 36; and

WHEREAS, initially, the applicant proposed to build the unmapped portion of Massachusetts Street South to match the existing width of its mapped portion (20’-0”) and extend the road north to connect to Hylan Boulevard; however, in response to Fire Department concerns regarding access, the proposal was revised to reflect a width of 30’-0” for the unmapped portion of Massachusetts Street South; and

WHEREAS, by letter dated December 8, 2014, the Fire Department states that it has no objection to the proposal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject certain conditions.

Therefore it is Resolved, that the decision of the DOB, dated March 21, 2014, acting on DOB Application No. 520147831, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 28, 2014”- one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT building shall be fully-sprinklered;

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 9, 2014.

278-13-A

APPLICANT – Slater & Beckerman, P.C., for 121 Varick St. Corp., owner.

SUBJECT – Application September 27, 2013 – Appeal of Department of Buildings’ determination that the advertising sign was not established as a lawful non- conforming use. M1-6 zoning district/SHSD.

PREMISES AFFECTED – 121 Varick Street, southwest corner of Varick Street and Dominick Street, Block 578, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

MINUTES

32-14-A

APPLICANT – Rothkrug,Rothkrug & Spector, LLP, for Little Morrow LLC, owner.

SUBJECT – Application February 13, 2014 – Proposed construction of a retail/warehouse building located partially within the bed of a mapped street contrary to Article 3, Section 35 of the General City Law and waiver of bulk non-compliances under §72-01-(g). M-2-1 Zoning District. PREMISES AFFECTED – 2560 Forest Avenue, southwest corner of intersection of Forest Avenue and Elizabeth Grove Road, Block 1384, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

109-14-A

APPLICANT – Eric Palatnik, P.C., for Carlo Saccheri, owner.

SUBJECT – Application May 23, 2014 – Proposed two story commercial building which does not front on a legally, mapped street contrary to GCL Section 36. M1-1 SRD Zoning District.

PREMISES AFFECTED – 44 Marjorie Street, south of Sharrotts Road and East of Arthur Kill Road, Block 7328, Lot 645, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

180-14-A

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for EXG 332 W 44 LLC c/o Edison Properties, owner.

SUBJECT – Application August 1, 2014 – Appeal challenging the Department of Building's determination that the subject façade treatment located on the north wall is an impermissible accessory sign as defined under the ZR Section 12-10. C6-2SCD zoning district.

PREMISES AFFECTED – 332 West 44th Street, south side West 44th Street, 378 west of the corner formed by the intersection of West 44th Street and 8th Avenue and 250' east of the intersection of West 44th Street and 8th Avenue, Block 1034, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for continued hearing.

ZONING CALENDAR

323-13-BZ

APPLICANT – Eric Palatnik, P.C., for Galt Group Holdings, owner.

SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to permit the proposed alteration, which will enlarge the footprint and include a vertical enlargement at the rear portion of the existing four story, plus cellar and basement contrary to lot coverage §23-145. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 127 East 71st Street, East 71st Street between Park and Lexington Avenues, Block 1406, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 13, 2013, acting on DOB Application No. 121810139, reads in pertinent part:

ZR 54-31 Proposed enlargement increases degree of existing non-compliance with lot coverage provisions of ZR 23-145 contrary to ZR 54-31; Non-complying lot coverage buildings cannot be enlarged as per ZR; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, made in connection with the applicant’s conversion of a mixed residential community facility use building to a single-family home, to permit, within an R8B zoning district, within an LH-1A Limited Heights district, within the Upper East Side Historic district, the enlargement of the proposed single-family home contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site fronts along the north side of East 71st Street, between Lexington Avenue and Park Avenue, within on the southwest corner of the intersection of 78th Road and 138th Street, within an R8B zoning district, within an LH-1A Limited Heights district, within the Upper East Side Historic district; and

WHEREAS, the site has approximately 20 feet of frontage along East 71st Street and approximately 2,043 sq. ft. of lot area; and

WHEREAS, the site is improved with a four-story, mixed residential and community-facility use building with

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approximately 6,479.33 sq. ft. of floor area; and

WHEREAS, the applicant proposes to enlarge the building by extending the rear portion of the building, resulting in an increase in floor area from 6,479.33 sq. ft. (3.17 FAR) to 7,516 sq. ft. (3.67 FAR); the maximum permitted floor area is 8,173.32 sq. ft. (4.0 FAR); and

WHEREAS, the applicant states that the enlargement will also increase the lot coverage of the building from 70 percent to 77 percent; the maximum permitted lot coverage is 70 percent; and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted a copy of the current certificate of occupancy for the building (No. 46435, dated October 22, 1956) to demonstrate that the building existed as a residence before December 15, 1961, which is the operative date within the subject R8B zoning district; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject building if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed FAR does not exceed 110 percent of the maximum permitted; and

WHEREAS, this application seeks only a waiver of lot coverage and the applicant represents that the lot coverage will not exceed 110 percent of the maximum floor area permitted in the zoning district; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, at hearing, the Board directed the applicant to provide (1) a revised Statement of Facts addressing the findings required under ZR 73-03; (2) photographs of the rear extension of the subject building taken from the roof of the subject building; (3) aerial photographs of the subject building depicting the full height of the rear buildings on 71st Street and the relationship of the aforesaid rear buildings to the subject building; (4) building footprints showing the rear yard depth and lot coverage of the subject building and surrounding buildings with frontage on East 71st Street and East 72nd Street; and (5) axonometric drawings illustrating the proposed volume of the subject building and its surrounding buildings, the existing and proposed dimensions of the subject building and its surrounding buildings, the rear wall heights of the buildings on the south side of block 1406, which front on East 71st Street, and the rear wall heights of the buildings on the north

side of block 1406, which front on East 72nd Street; and (6) revised plans indicating that the subject building is a single family home, that the roof deck shall be approved by DOB, depicts the proposed roof plan and elevator bulkhead; and

WHEREAS, in response, the applicant submitted the foregoing documents to the satisfaction of the Board; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of Appropriateness, dated November 26, 2014; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R8B zoning district, the enlargement of a proposed single-family home, which does not comply with the zoning requirements for FAR and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 15, 2014"- (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,774 sq. ft. (0.51 FAR) and 77 percent lot coverage, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objections(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 9, 2018; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not

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related to the relief granted.

Adopted by the Board of Standards and Appeals,
December 9, 2014.

48-14-BZ

CEQR #14-BSA-130K

APPLICANT – Eric Palatnik, P.C., for Vlad Benjamin, owner.

SUBJECT – Application March 26, 2014 – Special Permit (§73-622) for the enlargement of an existing two story single family home, contrary to floor area, lot coverage and open space (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 174 Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot 196, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated March 12, 2014, acting on DOB Application No. 320771465, reads in pertinent part:

Proposed floor area ratio is contrary to ZR 23-141(A)

Proposed lot coverage is contrary to ZR 23-141(B)

Proposed open space is contrary to SR 23-141(B);
and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, and lot coverage contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in *The City Record*, with continued hearings on September 23, 2014 and October 28, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Falmouth Street, between Oriental Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 60 feet of frontage along Falmouth Street, and approximately 6,240 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,765 sq. ft. of floor area (0.28 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant now seeks to enlarge the building, resulting in an increase in the floor area from 1,765 sq. ft. (0.28 FAR) to 6,229 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,120 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 83 percent to 63 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks to increase the lot coverage of the subject building from 17 percent to 37 percent; the maximum lot coverage is 35 percent; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a land use study to support its assertion that the proposed 0.99 FAR is consistent with buildings in the surrounding area; in addition, the applicant states that the street wall location and building height are in keeping with the surrounding buildings and submitted a streetscape in support of this assertion; and

WHEREAS, at hearing, the Board directed the applicant to revise its plans to reflect easement lines and lot boundaries and to note that a four-foot easement was not included in the zoning calculations and expressed concern about the size of the proposed balcony, planting at the subject premises and the inclusion of a pool on the drawings; and

WHEREAS, the Board directed the applicant to revise its plans to reflect that the only excavation to be performed at the subject premises is to accommodate the pouring of concrete for newly constructed walls and that the proposed building’s footprint will remain unexcavated beyond those excavations necessary in order to raise the walls of the building; and

WHEREAS, the Board directed the applicant to provide a photographic streetscape diagram of the subject block in order to illustrate the impact of the requested bulk waivers on the character of the subject neighborhood; and

WHEREAS, the Board directed the applicant to amend its drawings to reflect the removal of the balcony from the subject building, to accurately reflect the proposed 6,229 sq. ft. of floor area (0.99 FAR), to accurately reflect that the proposed total height of the building will be 33’-2”, and to accurately reflect the full hip at the front and the rear yard of the proposed building; and

WHEREAS, in response, the applicant submitted amended plans, diagrams and zoning analyses, incorporating the Board’s directions; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, or lot coverage, contrary to ZR § 23-14; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 26, 2014”– (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 6,229 sq. ft. (0.99 FAR), a minimum open space ratio of 63 percent, and a maximum lot coverage of 37 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objections(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

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 December 9, 2018; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 9, 2014.

96-14-BZ

CEQR #14-BSA-148M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.
SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district

PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson,

Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 30, 2014, acting on DOB Application No. 121333217, reads, in pertinent part:

1. Warehouse use (UG 16D) is not permitted in the R7-2 portion of the zoning lot, contrary to ZR 22-10;
2. The vertical clearance of the existing loading berth is less than the 14-foot required height, contrary to ZR 36-681;
3. The expansion of the curb cut access to the existing loading berth is less than 50 feet from the intersection of two street lines, contrary to ZR 36-682; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a self-storage facility (Use Group 16) within an existing two-story building, contrary to ZR §§ 22-10 (use), 36-681 (height of loading berth), and 36-682 (location of curb cut); and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in *The City Record*, with continued hearings on October 28, 2014, and November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of Dyckman Street and Henshaw Street, partially within a C8-3 zoning district and partially within an R7-2 zoning district; and

WHEREAS, the applicant represents that 58 percent of the lot area is within the C8-3 portion of the site and 42 percent of the lot area is within the R7-2 portion of the site; and

WHEREAS, the site has 100 feet of frontage along Dyckman Street, 169.3 feet of frontage along Henshaw Street, and 17,287 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story building that was constructed as a stable approximately 100 years ago; and

WHEREAS, the Board has exercised jurisdiction over the site since 1939, when, under BSA Cal. No. 171-39-A, it granted a building code appeal authorizing the conversion of the entire non-fireproof building to a parking garage; the applicant states that in 1944, the building was converted to a carpet cleaning factory; the building remained a carpet cleaning factory until 1983, when it became a wholesale bakery; and

WHEREAS, the applicant states that an application to legalize the bakery was filed with the Board under BSA Cal.

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No. 107-95-BZ and granted on March 7, 2000, for a term of five years, to expire on March 7, 2005; and

WHEREAS, the applicant now seeks to convert the building to a self-storage facility with 34,529 sq. ft. of floor area (3.4 FAR) and approximately 760 storage units of varying sizes; the proposed facility is a permitted use within the C8-3 portion of the lot but not within the R7-2 portion of the lot; thus, a use variance is requested; and

WHEREAS, in addition, the applicant states that the facility is required to provide one off-street loading berth in accordance with ZR § 36-62 and that such berth must comply with the minimum dimensional requirements of ZR § 36-681; and

WHEREAS, the applicant represents that the existing building has a loading berth that meets the minimum length (50'-0") and width (12'-0") for a loading berth for a Use Group 16 facility with 10,000 sq. ft. of floor area or more; however, the height of the berth, which 12'-6", is 1'-6" less than minimum height set forth in ZR § 36-681 (14'-0"); accordingly, the applicant seeks a waiver of ZR § 36-681; and

WHEREAS, finally, the applicant states that access to the building from the street must be modified in order to accommodate the proposed use; currently, the site has three existing curb cuts (two along Dyckman Street and one along Henshaw Street); the proposal reflects the elimination of the Henshaw Street curb cut and one Dyckman Street curb cut, and the expansion of the other Dyckman Street curb cut from its current width of 14'-0" to a width of 25'-0"; and

WHEREAS, the applicant states that the curb cut to be modified is located 13'-0" from the intersection of Henshaw Street and Dyckman Street; as such, the curb cut does not comply ZR § 36-682, which prohibits a curb cut with a loading berth within 50'-0" of the intersection of two streets; therefore, in addition to the use waiver and the waiver regarding the height of the loading berth, the applicant seeks a waiver to maintain and expand its curb cut contrary to ZR § 36-682; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the history of development of the site is a unique physical condition, which creates practical difficulties and unnecessary hardships in developing the site in conformance and compliance with underlying district regulations; and

WHEREAS, the applicant contends that due to the history of development of the site, neither the building nor the site itself is suitable for conforming uses; and

WHEREAS, the applicant states, as noted above, that the building was constructed approximately 100 years ago (when the site was within an "unrestricted" zone under the 1916 Zoning Resolution) and that it has been occupied at various times as a stable, a factory, and a wholesale bakery; and

WHEREAS, the applicant states that in 2000 (BSA Cal. No. 107-95-BZ), the Board recognized the unsuitability of the building for conforming uses when it granted a variance to legalize a wholesale bakery that had been in operation since the mid-1980s; in the resolution, the Board observed that the

building was "not readily convertible to a conforming use"; and

WHEREAS, the applicant states that in order to accommodate a conforming use, at a minimum, the building would require new elevators and egress stairs, upgraded fire and life-safety systems, and the construction of one or more lobbies (depending on whether one or multiple tenants would be occupying the building); and

WHEREAS, the applicant also contends that the conforming use options for the site are further constrained by the limited number of uses that are permitted in both a C8-3 zoning district and an R7-2 zoning district – namely, those within Use Group 4; thus, development of the site would be economically challenging even if the site were not occupied by an existing building; and

WHEREAS, the applicant asserts that the history of development of the site—its existing conditions—also create practical difficulties complying with the loading berth and curb cut provisions applicable to the proposed self-storage facility; and

WHEREAS, as to the loading berth, the applicant states that the building's existing loading berth cannot be enlarged to provide a height in accordance with ZR § 36-681 without significant structural modifications to the floor of the second story, at significant cost; and

WHEREAS, as to the existing (albeit expanded) curb cut contrary to ZR § 36-682, the applicant states that its location is dictated by the location of the loading berth and that it cannot be relocated without a corresponding relocation of the loading berth, at significant cost; further, the applicant contends that while the curb cut is being widened, the curb cut's degree of non-compliance with respect to the intersection—its distance from the intersection of 13'-0", where 50'-0" is required—is unchanged; and

WHEREAS, the Board agrees that the history of development of the site creates practical difficulties and unnecessary hardships in developing the site in conformance and compliance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance and compliance with the Zoning Resolution will realize a reasonable return; and

WHEREAS, the applicant provided a financial analysis for: (1) an as-of-right conversion to community facility (Use Group 4); and (2) the proposal; and

WHEREAS, the study concluded that only the proposal would provide a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to revise its financial analysis of the self-storage facility to better reflect the valuation of the proposed use; and

WHEREAS, in response, the applicant revised its analysis as directed; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in strict conformance and

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compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that along both Riverside Drive and Henshaw Street, the area is characterized by a predominance of residential buildings, many of which have ground floor retail; in contrast Dyckman Street is mostly occupied by a mix of automotive, industrial, and manufacturing uses; and

WHEREAS, the applicant contends that, in addition to being a conforming use in a portion of the site, the proposed self-storage facility is consistent with nearby uses; self-storage is predominantly used by residents to store household items, furniture, clothing, recreational gear, etc., that are used seasonally or infrequently, or are simply too large to fit into an urban living environment; thus, while the facility is not permitted as-of-right in a portion of the site or in the nearby residence districts, it is a complimentary use that will be an amenity for the community; and

WHEREAS, turning to bulk, the applicant states that no significant changes to the bulk of the building are proposed and that its massing will be the same as it has been for the past 100 years; and

WHEREAS, as to the size of the loading berth and the location of the curb cut, the applicant notes that these non-compliances are historic conditions, which have existed for several decades in connection with manufacturing and commercial uses; and

WHEREAS, turning to traffic, the applicant states that its reconfiguration of the building access—the removal of two curb cuts and expansion of one—will mitigate the impact of the facility on traffic; and

WHEREAS, the applicant states that patrons will access the facility from Dyckman Street, just west of Henshaw Street and that this configuration will orient pedestrian and vehicular traffic away from Henshaw Street and Riverside Drive and reduce the volume of non-residential traffic along those streets; and

WHEREAS, at hearing, the Board questioned whether the proposed loading area would have sufficient capacity to accommodate vehicular loading demand during peak periods; and

WHEREAS, in response, the applicant's traffic consultant analyzed the anticipated use of the facility (based on data from other self-storage facilities) and determined that:

(1) two-thirds of the trips to the facility would be made using modes of transportation (public transportation, walking, taxi) that would not occupy the loading area; (2) even during peak periods it projects no more than four vehicles utilizing the facility per hour; (3) the loading area accommodates up to three cars or vans when a truck or storage taxi is not present and one to two cars or vans when a truck or storage taxi is

present; and (4) street parking along Dyckman Street is available to accommodate additional vehicles during peak periods; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-148M dated April 30, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a self-storage facility (Use Group 16) within an existing two-story building, contrary to ZR §§ 22-10 (use), 36-681 (height of loading berth), and 36-682 (location of curb cut), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this

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application marked "Received May 6, 2014"-(6) sheets; and
on further 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 December 9, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all 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 9, 2014.

115-14-BZ

CEQR No. 14-BSA-159M

APPLICANT – Eric Palatnik, P.C., for Suzanne Bronfman, owner; T. Kang Taekwondo USA, Ink., lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to legalize for a physical culture establishment (*T.Kang Tae Kwon Do*) on the cellar and first floor in an existing building. C6-2A zoning district.

PREMISES AFFECTED – 85 Worth Street aka 83 Worth Street, between Church Street and Broadway, Block 173, Lot 2, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 20, 2014, acting on DOB Application No. 121809445, reads, in pertinent part:

ZR 32-10 – Proposed Physical Culture Establishment is not permitted as-of-right in a C6-2A zoning district per ZR Section 32-10...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site within a C6-2A zoning district, within the Tribeca East Historic District, an existing physical culture establishment (the "PCE") on the cellar and first story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 21, 2014 after due notice by publication in the *City Record*, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson,

Commissioner Montanez and Commissioner Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site fronts on the north side of Worth Street, between Church Street and Broadway, within a C6-2A zoning district, within the Tribeca East Historic District; and

WHEREAS, the site has approximately 47.6 feet of frontage along Worth Street with a lot area of approximately 4,847 sq. ft.; and

WHEREAS, the site is occupied by a five-story commercial building which contains approximately 4,847 sq. ft. of floor area and the PCE is operating as T. Kang Tae Kwon Do; and

WHEREAS, the PCE occupies a portion of the cellar and first floor of the Building; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 12:00 p.m. to 9:00 p.m., and on Saturdays from 10:00 a.m. to 3:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, at hearing, the Board directed the applicant to revise the plans to include the cellar level egress travel path and to indicate those portions of the cellar of the Building which will not be used as part of the PCE; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated July 22, 2014; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of the grant has been reduced to reflect the operation of the PCE without the special permit, which commenced on October 1, 2011; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-159M, dated August 11, 2014; and

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Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to legalize, on a site within a C6-2A zoning district, within the Tribeca East Historic District, the operation of a PCE on the first story and cellar of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 5, 2014"- Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on October 1, 2021;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 9, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 9, 2014.

132-14-BZ

CEQR #14-BSA-174K

APPLICANT – Warshaw Burstein, LLP, for 441 Rockaway, LLC, owner; 441 Rockaway Ave. Fitness Group, LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building, located within a C4-3 zoning district. PREMISES AFFECTED – 441 Rockaway Avenue, frontage on Rockaway Avenue and Thatford Avenue, south of Pitkin Avenue, Block 3522, Lot(s) 9, 26, Borough of Brooklyn.

COMMUNITY BOARD #16BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez..4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated June 10, 2014, acting on DOB Application No. 320917184, reads, in pertinent part:

ZR 32-10 – Proposed Physical Culture Establishment is not permitted as-of-right in a C4-3 zoning district per ZR Section 32-10...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the operation of a physical culture establishment ("PCE") on the cellar and first story of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 23, 2014 after due notice by publication in the *City Record*, with a continued hearing on November 18, 2014, and then to decision on December 9, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 16, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is a through lot with frontage on Rockaway Avenue and Thatford Avenue, south of Pitkin Avenue, within a C4-3 zoning district; and

WHEREAS, the site has approximately 50 feet of frontage along Rockaway Avenue and 25 feet of frontage along Thatford Avenue, with a lot area of approximately 7,506 sq. ft.; and

WHEREAS, the site is occupied by a one-story commercial building which contains approximately 7,500 sq. ft. of floor area on the first floor and approximately 5,000 sq. ft. of floor space at the cellar level, for a total floor space of approximately 12,500 sq. ft.; and

WHEREAS, the proposed PCE will occupy the entire building and be operated as Planet Fitness; and

WHEREAS, the hours of operation for the PCE will be open seven days per week, 24 hours per day; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, at hearing, the Board directed the applicant to remove graffiti from the exterior of the building and to clarify the parking requirements of the site and

MINUTES

anticipated parking needs of the PCE; and

WHEREAS, as to the graffiti, the applicant submitted photos depicting the removal of the graffiti; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-174K, dated June 13, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3 zoning district, the operation of a PCE on the first story and cellar of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 13, 2014"- Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on December 9, 2024;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 9, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the

applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 9, 2014.

30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Remand Back to Board of Standards and Appeals; seeks a judgment vacating the resolution issued on January 15, 2013 and filed on January 17, 2013. R6-/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for continued hearing.

81-12-BZ

APPLICANT – Eric Palatnik, P.C., for McDonald's Real Estate Co., owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-243) to permit the demolition and reconstruction of an eating and drinking establishment (Use Group 6) with an accessory drive-through and on-site parking. C1-3/R3-2/R3A zoning district.

PREMISES AFFECTED –98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 23, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

174-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for 58-66 East Fordham Road, owner; LRHC Fordham Road LLC., lessee.

SUBJECT – Application June 13, 2014 – Special Permit (§73-36) to allow the reestablishment of an expired physical culture establishment (*Lucille Roberts*) on the second floor, contrary to (§32-31). C4-4 zoning district.

PREMISES AFFECTED – 2449 Morris Avenue a/k/a 58-66 East Fordham Road, Block 3184, Lot 45, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Laid over to March 10, 2015, at 10 A.M., for continued hearing.

MINUTES

176-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 2 residential in an existing 6-story building with a new penthouse addition, contrary to Section 42-10 of the zoning resolution. M1-5B zoning district.

PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, Borough of Manhattan.

COMMUNITY BOARD # 2M

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

185-13-BZ

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 10, 2015, at 10 A.M., for decision, hearing closed.

186-13-BZ

APPLICANT – Harold Weinberg, P.E., for Apostollis Goutsios, owner.

SUBJECT – Application June 21, 2013 – Special Permit (§73-622) for an enlargement to an existing single family home, contrary to side yard regulations (ZR 23-461) of the zoning resolution. R5 (BR) zoning district.

PREMISES AFFECTED – 117 Gelston Avenue, east side 125'-13/8" south of 90th Street and 92nd Street, Block 6089, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to legalize a physical culture establishment (*Brick CrossFit*) on the ground floor and cellar of an existing 10-story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces from 346 to 272 spaces for a mixed use building containing UG4 health care and UG 6 office uses. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

329-13-BZ

APPLICANT – Alexander Levkovich, for Sam Ravit, owner.

SUBJECT – Application December 31, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (23-141). R3-1 zoning district.

PREMISES AFFECTED – 145 Girard Street, east side of Girard Street, approximately 600' south of intersection with Hampton Avenue, Block 8750, Lot 386, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 10, 2015, at 10 A.M., for continued hearing.

8-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Oleg Saitskiy, owner.

SUBJECT – Application January 16, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141); side yards requirements (§23-461) and less than the rear yard requirement (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1824 East 22nd Street, west side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

MINUTES

25-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Yeshiva of Flatbush, LLC, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing four story Yeshiva (*Yeshiva of Flatbush*). R2 & R5 zoning districts.

PREMISES AFFECTED – 1601-1623 Avenue J aka 985-995 East 16th Street & 990-1026 East 17th Street, Block 6709, Lot(s) 32, 34, 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

26-14-BZ

APPLICANT – Francis R. Angelino, Esq., for The Hewitt School, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing community facility (*Hewitt School*), contrary to maximum building height (24-591); street wall height (§24-592); and rear yard requirements (§24-36). R8B zoning district.

PREMISES AFFECTED – 45 East 75th Street aka 42-76 East 76th Street, north side, East 75th Street through block to south side E 76th between Park & Madison Avenues, Block 1390, Lot(s) 28, 46, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for decision, hearing closed.

28-14-BZ

APPLICANT – Eric Palatnik, P.C. for McDonald Corporation, owner; Brooklyn Avenue U Enterprises Corporation, lessee.

SUBJECT – Application February 10, 2014 – Special Permit (§73-243) to permit the continued use and (Use Group 6) eating and drinking establishment with an accessory drive-through. C1-2/R4 zoning district.

PREMISES AFFECTED – 3540 Nostrand Avenue, westside of Nostrand Avenue, between Avenue V and Avenue W. Block 7386, Lot(s) 114 and 117. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

59-14-BZ

APPLICANT – Caroline G. Harris, for School Settlement Association Ink., owner.

SUBJECT – Application April 10, 2014 – Variance (§72-21) to permit the construction of a four-story plus penthouse community facility (UG 4), contrary to (24-11). R6B zoning

district.

PREMISES AFFECTED – 114-122 Jackson Street, located on the SW corner of the Intersection of Jackson Street and Manhattan Avenue. Block 2748, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 10, 2015, at 10 A.M., for continued hearing.

64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

91-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

114-14-BZ

APPLICANT – Eric Palatnik, P.C., for Boris Vaysburb, owner.

SUBJECT – Application May 30, 2014 – Special Permit (§73-622) for enlargement of an existing two story single family dwelling contrary to floor area ratio, open space and lot coverage (ZR 23-141); side yard (ZR 23-461) and less than the rear yard requirements (ZR 23-47). R4 zoning district.

PREMISES AFFECTED – 2442 East 14th Street, between Avenue X and Avenue Y, Block 7415, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for continued hearing.

MINUTES

117-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Trinity Episcopal School Corporation, owner; Trinity Housing Comp. Inc., lessee.

SUBJECT – Application June 3, 2014 – Variance (§72-21) to permit the enlargement of a school (*Trinity School*), including construction of a 2-story building addition with rooftop turf field, contrary to required rear yard equivalents, lot coverage, height and setback, and minimum distances between buildings. Split zoning lot within R7-2 and C1-9 zoning districts.

PREMISES AFFECTED – 101 W 91st Street, 121 & 139 W 91st St and 114-124 W 92nd St, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17, 29, 40, 9029, Borough of Manhattan.

COMMUNITY BOARD # 7M

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 9, 2014
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez

183-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Ann/Nassau Realty LLC, owner; Blink Nassau Street, Ink., lessee.

SUBJECT – Application August 6, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within portions of an existing mixed use building. C5-5(LM) zoning district.

PREMISES AFFECTED – 113 Nassau Street aka 6 Theater Alley, northwest side of Nassau Street, 35.02’ north of Ann Street, Block 90, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for decision, hearing closed.

Ryan Singer, Executive Director

BULLETIN

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December 24, 2014

DIRECTORY

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Tuesday, December 16, 2014**

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921-57-BZ	6602 New Utrecht Avenue, Brooklyn
902-79-BZ	116-118 West 29 th Street, Manhattan
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148-03-BZ	111/113 West 28 th Street, Manhattan
964-87-BZ	786 Burke Avenue, aka 780-798 Burke Avenue, Bronx
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310-14-BZ	297 Colony Avenue, Staten Island
312-14-BZ	65 Hempstead Avenue, Staten Island

DOCKETS

New Case Filed Up to December 16, 2014

322-14-BZ

82 Coleridge Street, Between Shore Boulevards and Hampton Avenue, Block 8728, Lot(s) 58, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge a single family home in a residential zoning district, also to vary the floor area ratio, open space and lot coverage and located within an R3-1 zoning district. R3-1 district.

323-14-BZ

282 Corbin Place, On Crbin Place adjacent to the Coney Island Beach and Boardwalk, Block 8723, Lot(s) 276, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-622) to enlarge a single family home in a residential district and located within a R3-1 zoning district. R3-1 district.

324-14-BZ

198-30 Jamaica Avenue, Southwest corner of Jamaica Avenue, Block 10829, Lot(s) 56, Borough of **Queens, Community Board: 12**. Reinstatement (§11-411) for an automotive repair facility (UG 16B) granted under Cal. No. 909-52-BZ, expiring January 29, 2000, Also an Amendment to permit the sale of used cars, located within an C2-2 in an R5 zoning district. C2-2 in R5 district.

325-14-A

631 Bay Street, Between Canal Street and Thompson Street, Block 494, Lot(s) 10, Borough of **Staten Island, Community Board: 1**. GCL 35 Waiver: proposed construction of a mixed use building located partly within the bed of a mapped street contrary to kArticle 3, Section 35 of the General City Law. C4-2/R6 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

JANUARY 13, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 13, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

717-28-BZ

APPLICANT –Fried Frank Harris Shriver and Jacobson LLP, for Allan's Garage LLC, owner.

SUBJECT – Application August 26, 2014 – Amendment (§11-413) of a previously approved variance which permitted the operation of a public parking facility. The amendment seeks to permit a reduction in size of an existing 515 parking space facility to allowed a 143 space parking facility to be included in an as-of-right residential development. C2-8A zoning district.

PREMISES AFFECTED – 52-58 East 87th Street, south side of East 87th Street, 35.17' east of the corner formed by the intersection of East 87th Street and Lexington Avenue, Block 1515, Lot(s) 46, 45, Borough of Manhattan.

COMMUNITY BOARD #8M

172-79-BZ

APPLICANT – Alfonso Duarte, for Luciano Utopia LLC., owner.

SUBJECT – Application July 16, 2014 – Extension of Term of a previously approved variance permitting the operation of a Real Estate office and accessory parking which will expire on July 24, 2014. R2 zoning district.

PREMISES AFFECTED – 167-04 Northern Boulevard, southeast corner of 16th Street, Block 5398, Lot 11, Borough of Queens

COMMUNITY BOARD #4Q

APPEALS CALENDAR

110-14-A thru 112-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for WRR Realty Corp., owner.

SUBJECT – Application May 29, 2014 – Proposed construction of buildings that does not front a legally mapped street, pursuant the Article 3, Section 36 of the General City Law. R3A zoning district.

PREMISES AFFECTED – 115, 109, 105 Roswell Avenue, north side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2642, Lot 88, 91, 92, Borough Staten Island

COMMUNITY BOARD #2SI

JANUARY 13, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 13, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

169-14-BZ

APPLICANT – Simons & Wright LLC, for Midyan Gate Reality No. 3 LLC., owner.

SUBJECT – Application July 21, 2014 – Special Permit (§73-19) to allow a school (Use Group 3) (*Inner Force Y*) within the existing building. M1-1 Ocean Parkway Special zoning district.

PREMISES AFFECTED – 325 Avenue Y, southwest corner of Avenue Y between Shell Road and West 3rd Street, Block 7192, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

203-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16 West 8th LLC, owner; 305 Fitness, lessee.

SUBJECT – Application August 25, 2014 - Special Permit (§73-36):to permit a physical culture establishment within portions of an existing commercial building. C4-5 zoning district.

PREMISES AFFECTED – 18 West 8th Street, South side of West 8th Street, 97.2 feet east of intersection of West 8th Street and MacDougal Street. Block 551, Lot 23. Borough of Manhattan.

COMMUNITY BOARD #2M

Ryan Singer, Executive Director

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REGULAR MEETING TUESDAY MORNING, DECEMBER 16, 2014 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.

SPECIAL ORDER CALENDAR

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.
SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.
PREMISES AFFECTED – 123-05 101st Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance authorizing an automobile repair station (Use Group 16) and an office (Use Group 6), which expired on July 9, 2012; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with continued hearings on July 29, 2014 and November 25, 2014, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of 123rd Street and 101st Avenue, within an R6B (C2-3) zoning district; and

WHEREAS, the site has approximately 93 feet of frontage along 123rd Street, approximately 85 feet of frontage along 101st Avenue, and approximately 7,926 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story building with 4,775 sq. ft. of floor area (0.6 FAR); the building is occupied by a gasoline service station (Use Group 16) on the first story and an office (Use Group 6) on the second story; in addition, the site has parking for four automobiles; and

WHEREAS, the Board has exercised jurisdiction over the site since September 16, 1932, when, under the subject calendar number, it granted a variance to allow the site to be

occupied as a motor vehicle repair shop contrary to the use regulations of the 1916 Zoning Resolution; the Board granted the variance without a term; and

WHEREAS, on July 9, 2002, the Board authorized and amendment to the grant pursuant to ZR §§ 11-411 and 11-412 to legalize the change of use of the first story from gasoline service station to automobile repair station and the construction of a second story to be occupied as an office (Use Group 6); the Board also amended the grant to include a term of ten years, to expire on July 9, 2012; and

WHEREAS, the applicant now seeks an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove the enclosure from the exterior stairway; (2) repair and replace broken sidewalks and concrete within the site; (3) repair the fence slats adjacent to the residence; and (4) remove non-passenger automobiles from the parking spaces and install a sign limiting the parking to passenger automobiles; and

WHEREAS, in response, the applicant provided photos depicting the removal of the enclosure, the repair of the sidewalks, concrete, and fence slats, the removal of non-passenger automobiles from the site, and the installation of the requested sign; and

WHEREAS, based upon the above, the Board finds that the evidence in the record supports the findings required to be made under ZR § 11-411, and 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated September 16, 1932, so that as amended the resolution reads: “to extend the term of the grant for ten years from the prior expiration, to expire on July 9, 2022; *on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received March 7, 2014’ – (3) sheets; and on further condition:

THAT this grant shall be limited to a term of ten years, to expire on July 9, 2022;

THAT signage, fencing, and landscaping will be maintained in accordance with the BSA-approved plans;

THAT the hours of operation shall be limited to Monday through Saturday, from 9:00 a.m. to 6:00 p.m. and closed Sunday;

THAT the site shall be maintained free of debris and graffiti;

THAT there shall be no outdoor repairs;

THAT parking shall be limited to four passenger automobiles;

THAT there shall be no truck parking and no parking on the sidewalk;

THAT lighting shall be directed downward and away from adjoining residences;

THAT the above conditions shall be noted in the Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained by December 9, 2015;

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THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401040850)

Adopted by the Board of Standards and Appeals, December 16, 2014.

833-52-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Zonar LLC, owner.

SUBJECT – Application March 14, 2014 – ZR (§11-411) Extension of Term for the continued operation of a gasoline service station (*Sunoco*) which expired on January 15, 2012; Amendment to convert the existing service bays to a convenience store; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 5916-30 Foster Avenue, Foster Avenue and Southwest corner of Ralph Avenue, Block 7955, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening of a variance and an amendment to permit, on a site within an R5 (C1-2) zoning district, the conversion of the building for a gasoline service station (Use Group 16) to an accessory convenience store, and an extension of the term; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in *The City Record*, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Ralph Avenue and Foster Avenue, within an R5 (C1-2) zoning district; and

WHEREAS, the site has 123 feet of frontage along Foster Avenue, 110 feet of frontage along Ralph Avenue, and 7,439 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building

with 1,189 sq. ft. of floor area (0.16 FAR); the building is occupied by a gasoline service station (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the site since May 12, 1953, when, under the subject calendar number, it granted an application to permit the site to be occupied as a gasoline service station contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, in 2002, the Board extended the term for an additional ten years to expire on January 15, 2012; and

WHEREAS, accordingly, the applicant now seeks an extension of term; and

WHEREAS, in addition, the applicant seeks an amendment to permit the following: (1) the conversion of the one-story building at the site to an accessory convenience store; and (2) the installation of a garbage enclosure, new planting areas, and an ADA-accessible parking space; and

WHEREAS, the proposed hours of operation are 24 hours a day, seven days a week; and

WHEREAS, in addition, the applicant seeks approval for minor site plan modifications to reflect as-built conditions, including changes in the location of the gasoline tanks and remediation equipment; and

WHEREAS, the applicant confirmed that the existing curb cuts located along the Foster Avenue are wider than those approved and will be restored to a width of 30 feet, as approved; and

WHEREAS, the applicant notes that the proposal complies with DOB Technical Policy and Procedure Notice No. 10/1999, which sets forth the requirements for convenience stores accessory to gasoline and automotive service stations; and

WHEREAS, at hearing, the Board directed the applicant to repair the fence and paint the adjacent wall; and

WHEREAS, in response, the applicant submitted photographs which reflect certain repairs to the fence but also reveal fence slats in disrepair; as such, the Board stated that repair of the slats would be a condition of the grant; and

WHEREAS, based upon the above, the Board finds that the evidence in the record supports the findings required to be made under ZR § 11-411, and the requested extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 12, 1953, so that as amended the resolution reads: “to permit the noted modifications and to extend the term of the grant for ten years from the prior expiration, to expire on January 15, 2022; *on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received October 7, 2014–(5) sheets; and on further condition:

THAT this grant shall be limited to a term of ten years, to expire on January 15, 2022;

THAT the building will have a maximum of 1,189 sq. ft.

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of floor area (0.16 FAR);

THAT the fence slats will be repaired and maintained;

THAT the site will be maintained free of debris and graffiti;

THAT signage shall be in accordance with C1 regulations;

THAT landscaping and buffering will be maintained in accordance with the BSA-approved plans;

THAT lighting will be directed downward and away from adjoining residences;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT a certificate of occupancy will be obtained by December 9, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 320824248)

Adopted by the Board of Standards and Appeals, December 16, 2014.

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrachi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district

PREMISES AFFECTED – 6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of the term of a variance authorizing an automobile repair station (Use Group 16), which expired on May 29, 2013; and

WHEREAS, a public hearing was held on this application on September 16, 2014, after due notice by publication in *The City Record*, with continued hearings on October 28, 2014 and November 25, 2014, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of 66th Street and New Utrecht Avenue, within an R5 (C2-2) zoning district; and

WHEREAS, the site has approximately 63 feet of frontage along 66th Street, approximately 89 of frontage along New Utrecht Avenue, and 6,592 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 1,727 sq. ft. of floor area (0.26 FAR); the building is occupied by an automobile repair station (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the site since May 13, 1958, when, under the subject calendar number, it granted an application to permit the continued operation of a gasoline service station at the site contrary to the use regulations of the 1916 Zoning Resolution, for a term of 15 years; the grant was amended and extended at various times thereafter; and

WHEREAS, most recently, on August 12, 2003, the Board amended the grant to permit the conversion of the site to an automobile repair station; in addition, the Board extended the term of the grant for ten years, to expire on May 29, 2013; and

WHEREAS, the applicant now seeks a further extension of term; the applicant notes that no changes are proposed to the site plan; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of a variance granted pursuant to the 1916 Zoning Resolution; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide additional photographs depicting the condition of the site; (2) confirm that gasoline storage tanks were removed from the site; (3) revise the site plan to show the trash enclosure, fencing, lighting, and vehicle circulation; (4) describe how the operation of the station is consistent with neighborhood context; (5) clarify the hours of operation; and (6) repaint the subject building and explore painting the wall of the nearby building that is visible from the site; and

WHEREAS, in response, the applicant submitted: (1) the requested photographs; (2) a notarized statement from the owner regarding the removal the tanks; and (3) the requested revised site plan; and

WHEREAS, as to the neighborhood context for the repair station, the applicant submitted an analysis, which that reflects a variety of commercial and automobile-related are located nearby; in addition, the applicant notes that a C8-1 zoning district—where Use Group 16 is permitted as-of-right—is located directly across 66th Street; and

WHEREAS, as to the hours of operation, the applicant confirmed that the repair station operates Monday through Thursday, from 8:00 a.m. to 5:00 p.m., and Friday and Saturday, from 8:00 a.m. to 2:00 p.m.; the station is closed on Sunday; and

WHEREAS, as to the painting, the applicant: (1)

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provided photographs depicting the painting of the repair station building; and (2) states that it has attempted to contact the owner of the adjacent building, to no avail, but will continue the outreach; and

WHEREAS, based upon the above, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 12, 1953, so that as amended the resolution reads: “to permit an extension of term for ten years from the prior expiration, to expire on May 29, 2023; *on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received December 12, 2014’– (4) sheets; and on further condition:

THAT the term of the grant shall expire on May 29, 2023;

THAT the site will be maintained free of debris and graffiti;

THAT signage shall be in accordance with C1 regulations;

THAT landscaping and buffering will be maintained in accordance with the BSA-approved plans;

THAT lighting will be directed downward and away from adjoining residences;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT a certificate of occupancy will be obtained by December 16, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 301499108)

Adopted by the Board of Standards and Appeals, December 16, 2014.

902-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED –116-118 West 29th Street, south

side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49, 50, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to reopen and amend four existing variances to facilitate the transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends disapproval of the application, citing the following concerns regarding the proposed amendment to BSA Cal. No. 148-03-BZ to permit the transfer of development rights from Lot 7502 to Lots 30, 31, and 32: (1) that hotel development was entirely possible and foreseeable with unused development rights in 2003; (2) that there was an active hotel market in the neighborhood surrounding the site in 2003; (3) that an assemblage was possible in 2003 but intentionally not pursued by the owner of Lot 7502; (4) that permitting the transfer would set a negative precedent that would allow variance sites to receive a windfall; (5) that such precedent would encourage conversion of commercial/manufacturing space to residential with no affordability requirements; (6) that Lot 7502’s condominium offering plan contemplated the transfer of unused development rights; and (7) that Lots 30, 31, and 32 can be developed without Lot 7502’s development rights but rather with Lot 49’s development rights (through Lot 44), which it endorses; and

WHEREAS, the Hotel Trades Council submitted testimony in opposition to the application, citing the following concerns: (1) that hotel development was entirely possible and foreseeable with unused development rights in 2003; (2) that there was an active hotel market in the neighborhood surrounding the site in 2003; and (3) that allowing the proposed transfer of development rights from Lot 7502 to Lots 30, 31, and 32 undermines the (e) finding that the Board made in BSA Cal. No. 148-03-BZ; and

WHEREAS, the application is brought on behalf of the owners of Lots 30, 31, 32, 49, and 7502 (collectively, “the applicants”); and

WHEREAS, the owner of Lots 30, 31, and 32 (105-109 West 28th Street) (the “Development Parcel”) seeks the

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Board's authorization to form a zoning lot with two existing sites under the Board's jurisdiction: Lot 7502 (111-113 West 28th Street) (the "Flower House Condominium") and Lot 49 (114-120 West 29th Street) (the "29th Street Buildings"); collectively, the lots comprise the subject site; and

WHEREAS, the site has 107.17 feet of frontage along West 28th Street, 85 feet of frontage along West 29th Street, and 18,976.46 sq. ft. of lot area; it is partially within a C6-4X zoning district and partially within an M1-6 zoning district; and

WHEREAS, the site is occupied by seven buildings; the 29th Street Buildings include the four-story building located at 114 West 29th Street (which has 7,337 sq. ft. of floor area), the 12-story building located at 116-118 West 29th Street (which has 42,908 sq. ft. of floor area), and the three-story building located at 120 West 29th Street (which has 5,727 sq. ft. of floor area); the Flower House Condominium is a seven-story building (which has 21,305 sq. ft. of floor area); the Development Parcel (Lots 30, 31, and 32) is occupied by three, four-story buildings, which are occupied by various uses, including residences, a florist supply establishment, a wholesale florist, and a retail store; and

WHEREAS, the applicants represent that Lot 49 has approximately 27,364 sq. ft. of unused development rights available for transfer to Lots 30, 31, and 32 and that Lot 7502 has approximately 20,993 sq. ft. of unused development rights available for transfer to Lots 30, 31, and 32; and

WHEREAS, the applicants state that Lot 7502 has been subject to the Board's jurisdiction since October 28, 2003, when, under BSA Cal. No. 148-03-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing residential use within portions of a building on a site within an M1-6 zoning district, contrary to use regulations; on April 4, 2006, the Board approved an amendment to this grant, which authorized the construction of a mezzanine at the penthouse level; and

WHEREAS, the applicants state that Lot 49 was historically known as Lots 49, 50, and 52; historic Lot 49 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 902-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing 12-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; historic Lot 50 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 1097-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing three-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; historic Lot 52 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 1096-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing three-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; and

WHEREAS, thus, the Board notes that each of the subject variances involved a change of use of an existing

building with little or no impact on bulk; and

WHEREAS, the applicants now seek amendments to the subject variances to reflect the merger of Lots 30, 31, 32, 49, and 7502 in order to facilitate the transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32; and

WHEREAS, the applicants also propose to modify the site plans of the four variances to reflect the merger of Lots 30, 31, 32, 49, and 7502; and

WHEREAS, the applicants represent that the proposed zoning lot merger and development rights transfer will not have any effect on the existing buildings located on Lots 49 and 7502; and

WHEREAS, in addition, the applicants contend that the proposed transfer of development rights is consistent with the Court's decision in Bella Vista v. Bennett, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, the applicants assert that a transfer of the unused development rights from Lots 49 and 7502 is allowed because it is not in conflict with any of the Board's prior actions with respect to those lots; and

WHEREAS, the applicants state that the applications under BSA Cal. Nos. 902-79-BZ, 1097-79-BZ, and 1096-79-BZ reflect that the unused development rights were not considered in the Board's analysis; therefore, the applicants assert that it may be presumed that at the time the rights did not have a value; consequently, allowing Lot 49 to merge with and transfer its development rights to Lots 30, 31, and 32 would not undermine any of the Board's findings in those grants; and

WHEREAS, as for BSA Cal. No. 148-03-BZ, the applicant asserts that the excess development rights of Lot 7502 did not have any value in 2003, because there were no receiving sites available; in support of this assertion, the applicants analyzed whether any parcel adjacent to Lot 7502 was a viable development site as of 2003; the analysis took into account the ownership of the site (whether it was commonly owned with adjacent parcels such that a development assemblage was possible), the lot width and lot area of the site, the permitted uses at the site, and the degree to which the site could be further developed independent of the available development rights; and

WHEREAS, in addition, the applicant states that the proposed transfer will occur more than ten years after the Board's original grant and that there have been substantial and unforeseeable changes in the economic climate of the city and the real estate market since 2003, including a significant increase in the demand for hotels in the neighborhood surrounding the site; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information about the hotel development market in the neighborhood surrounding the site as of 2003; and

WHEREAS, in response, the applicant provided an analysis, which reflects that there were no land use transfers

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for hotel use between 2001 and 2004 in the area bound by Sixth Avenue, Seventh Avenue, West 24th Street, and West 31st Street; further, during this period there was a significant downturn in the economy, resulting in little to no hotel development in the area; hence, there was no market for development rights to facilitate hotel development at the time the variance was under consideration by the Board; and

WHEREAS, thus, the applicants state that an approval of the requested development rights transfer from Lots 49 and 7502 do not undermine the integrity of the Board's earlier findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in Bella Vista; and

WHEREAS, the applicants conclude that the use of the development rights as a result of the proposed zoning lot merger is therefore not inconsistent with the Board's prior approvals; and

WHEREAS, the Board notes that Bella Vista concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance to permit operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership—for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, *inter alia*, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board notes that, unlike in Bella Vista, the transferring sites (Lots 49 and 7502) and the receiving site (Lots 30, 31, and 32) have been under separate, unrelated ownership since the Board's grants; therefore, the owners of Lots 49 and 7502 lacked control over the timing and nature of the development of Lots 30, 31, and 32; and

WHEREAS, the Board also notes that a brief period of time elapsed between the date of the Bella Vista variance grant and the date of the subsequent permit application which also distinguishes that case from the proposed development rights transfer under review in the subject application; and

WHEREAS, the Board notes that in Bella Vista, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, while the variances for the subject site were granted in 1980 (34 years before the filing of the instant application) and in 2003 (10 years before the filing of the instant application); and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the Bella Vista case from the instant case and supports the conclusion that the use of Lots 49 and 7502's unused development rights was not foreseeable by the owner of Lots 30, 31, and 32 or the Board; and

WHEREAS, the Board finds that, with respect to BSA

Cal. Nos. 902-79-BZ, 1097-79-BZ, 1096-79-BZ, and 148-03-BZ, the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) finding, at the time that they were made; and

WHEREAS, the Board observes that this finding is based on both the infeasibility of assemblage at the time of the grants and on the changing real estate market conditions in the neighborhood surrounding the site; and

WHEREAS, turning to the concerns of Community Board 5 and the Hotel Trades Council (the "Opposition"), as noted above, the Board finds that the proposal is not in conflict with the Bella Vista case and is consistent with the Board's precedent applying Bella Vista and disagrees that Lot 7502's development rights' value, such as they were, could be realized in 2003; similarly, the Board disagrees that there was an active market for hotel development in the neighborhood surrounding the site in 2003 and finds that the evidence in the record supports the applicants' assertion that hotel development was not occurring in the neighborhood in 2003; as for the Opposition's concerns regarding precedent, the Board observes that, under Bella Vista, it must determine on a case-by-case basis whether a proposed lot merger undermines a prior variance; and

WHEREAS, the Board has considered the Opposition's remaining contention and finds them without merit and/or irrelevant to the instant application; and

WHEREAS, based upon its review of the record, the Board does not object to the proposed merger of Lots 30, 31, 32, 49, and 7502; and

WHEREAS, additionally, the Board does not object to a transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32, subsequent to the proposed zoning lot merger, but notes that any further changes to Lots 49 and 7502 that are inconsistent with prior approvals are subject to the Board's review and approval.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolutions, having been adopted on January 29, 1980 and October 28, 2003, so that as amended this portion of the resolutions shall read: "to permit the merger of Lots 49, 7502, 30, 31, and 32 and the associated modifications to the BSA-approved site plan, *on condition* that all site conditions will comply with drawings marked 'Received November 5, 2014'-(5) sheets; and *on further condition*:

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB's review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board's jurisdiction, including modifications to the buildings on the site;

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its

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jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 16, 2014.

1096-79-BZ & 1097-79-BZ

APPLICANT – Goldman Harris LLC, for West 29th Street Owner's Corp., owners.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED – 120 & 114 West 29th Street, south side of West 29th Street between Sixth and Seventh Avenue, Block 804, Lot (s) 49 (aka 52), Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to reopen and amend four existing variances to facilitate the transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends disapproval of the application, citing the following concerns regarding the proposed amendment to BSA Cal. No. 148-03-BZ to permit the transfer of development rights from Lot 7502 to Lots 30, 31, and 32: (1) that hotel development was entirely possible and foreseeable with unused development rights in 2003; (2) that there was an active hotel market in the neighborhood surrounding the site in 2003; (3) that an assemblage was possible in 2003 but intentionally not pursued by the owner of Lot 7502; (4) that permitting the transfer would set a negative precedent that would allow variance sites to receive a windfall; (5) that such precedent would encourage conversion of commercial/manufacturing space to residential with no affordability requirements; (6) that Lot 7502's condominium offering plan contemplated the transfer of unused

development rights; and (7) that Lots 30, 31, and 32 can be developed without Lot 7502's development rights but rather with Lot 49's development rights (through Lot 44), which it endorses; and

WHEREAS, the Hotel Trades Council submitted testimony in opposition to the application, citing the following concerns: (1) that hotel development was entirely possible and foreseeable with unused development rights in 2003; (2) that there was an active hotel market in the neighborhood surrounding the site in 2003; and (3) that allowing the proposed transfer of development rights from Lot 7502 to Lots 30, 31, and 32 undermines the (e) finding that the Board made in BSA Cal. No. 148-03-BZ; and

WHEREAS, the application is brought on behalf of the owners of Lots 30, 31, 32, 49, and 7502 (collectively, “the applicants”); and

WHEREAS, the owner of Lots 30, 31, and 32 (105-109 West 28th Street) (the “Development Parcel”) seeks the Board's authorization to form a zoning lot with two existing sites under the Board's jurisdiction: Lot 7502 (111-113 West 28th Street) (the “Flower House Condominium”) and Lot 49 (114-120 West 29th Street) (the “29th Street Buildings”); collectively, the lots comprise the subject site; and

WHEREAS, the site has 107.17 feet of frontage along West 28th Street, 85 feet of frontage along West 29th Street, and 18,976.46 sq. ft. of lot area; it is partially within a C6-4X zoning district and partially within an M1-6 zoning district; and

WHEREAS, the site is occupied by seven buildings; the 29th Street Buildings include the four-story building located at 114 West 29th Street (which has 7,337 sq. ft. of floor area), the 12-story building located at 116-118 West 29th Street (which has 42,908 sq. ft. of floor area), and the three-story building located at 120 West 29th Street (which has 5,727 sq. ft. of floor area); the Flower House Condominium is a seven-story building (which has 21,305 sq. ft. of floor area); the Development Parcel (Lots 30, 31, and 32) is occupied by three, four-story buildings, which are occupied by various uses, including residences, a florist supply establishment, a wholesale florist, and a retail store; and

WHEREAS, the applicants represent that Lot 49 has approximately 27,364 sq. ft. of unused development rights available for transfer to Lots 30, 31, and 32 and that Lot 7502 has approximately 20,993 sq. ft. of unused development rights available for transfer to Lots 30, 31, and 32; and

WHEREAS, the applicants state that Lot 7502 has been subject to the Board's jurisdiction since October 28, 2003, when, under BSA Cal. No. 148-03-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing residential use within portions of a building on a site within an M1-6 zoning district, contrary to use regulations; on April 4, 2006, the Board approved an amendment to this grant, which authorized the construction of a mezzanine at the penthouse level; and

WHEREAS, the applicants state that Lot 49 was historically known as Lots 49, 50, and 52; historic Lot 49 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 902-79-BZ, the Board

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granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing 12-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; historic Lot 50 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 1097-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing three-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; historic Lot 52 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 1096-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing three-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; and

WHEREAS, thus, the Board notes that each of the subject variances involved a change of use of an existing building with little or no impact on bulk; and

WHEREAS, the applicants now seek amendments to the subject variances to reflect the merger of Lots 30, 31, 32, 49, and 7502 in order to facilitate the transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32; and

WHEREAS, the applicants also propose to modify the site plans of the four variances to reflect the merger of Lots 30, 31, 32, 49, and 7502; and

WHEREAS, the applicants represent that the proposed zoning lot merger and development rights transfer will not have any effect on the existing buildings located on Lots 49 and 7502; and

WHEREAS, in addition, the applicants contend that the proposed transfer of development rights is consistent with the Court's decision in Bella Vista v. Bennett, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, the applicants assert that a transfer of the unused development rights from Lots 49 and 7502 is allowed because it is not in conflict with any of the Board's prior actions with respect to those lots; and

WHEREAS, the applicants state that the applications under BSA Cal. Nos. 902-79-BZ, 1097-79-BZ, and 1096-79-BZ reflect that the unused development rights were not considered in the Board's analysis; therefore, the applicants assert that it may be presumed that at the time the rights did not have a value; consequently, allowing Lot 49 to merge with and transfer its development rights to Lots 30, 31, and 32 would not undermine any of the Board's findings in those grants; and

WHEREAS, as for BSA Cal. No. 148-03-BZ, the applicant asserts that the excess development rights of Lot 7502 did not have any value in 2003, because there were no receiving sites available; in support of this assertion, the applicants analyzed whether any parcel adjacent to Lot 7502 was a viable development site as of 2003; the analysis took into account the ownership of the site (whether it was

commonly owned with adjacent parcels such that a development assemblage was possible), the lot width and lot area of the site, the permitted uses at the site, and the degree to which the site could be further developed independent of the available development rights; and

WHEREAS, in addition, the applicant states that the proposed transfer will occur more than ten years after the Board's original grant and that there have been substantial and unforeseeable changes in the economic climate of the city and the real estate market since 2003, including a significant increase in the demand for hotels in the neighborhood surrounding the site; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information about the hotel development market in the neighborhood surrounding the site as of 2003; and

WHEREAS, in response, the applicant provided an analysis, which reflects that there were no land use transfers for hotel use between 2001 and 2004 in the area bound by Sixth Avenue, Seventh Avenue, West 24th Street, and West 31st Street; further, during this period there was a significant downturn in the economy, resulting in little to no hotel development in the area; hence, there was no market for development rights to facilitate hotel development at the time the variance was under consideration by the Board; and

WHEREAS, thus, the applicants state that an approval of the requested development rights transfer from Lots 49 and 7502 do not undermine the integrity of the Board's earlier findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in Bella Vista; and

WHEREAS, the applicants conclude that the use of the development rights as a result of the proposed zoning lot merger is therefore not inconsistent with the Board's prior approvals; and

WHEREAS, the Board notes that Bella Vista concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance to permit operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership—for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, inter alia, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board notes that, unlike in Bella Vista, the transferring sites (Lots 49 and 7502) and the receiving site (Lots 30, 31, and 32) have been under separate, unrelated ownership since the Board's grants; therefore, the owners of Lots 49 and 7502 lacked control over the timing and nature of the development of Lots 30, 31, and 32; and

WHEREAS, the Board also notes that a brief period of time elapsed between the date of the Bella Vista variance

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grant and the date of the subsequent permit application which also distinguishes that case from the proposed development rights transfer under review in the subject application; and

WHEREAS, the Board notes that in Bella Vista, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, while the variances for the subject site were granted in 1980 (34 years before the filing of the instant application) and in 2003 (10 years before the filing of the instant application); and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the Bella Vista case from the instant case and supports the conclusion that the use of Lots 49 and 7502's unused development rights was not foreseeable by the owner of Lots 30, 31, and 32 or the Board; and

WHEREAS, the Board finds that, with respect to BSA Cal. Nos. 902-79-BZ, 1097-79-BZ, 1096-79-BZ, and 148-03-BZ, the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) finding, at the time that they were made; and

WHEREAS, the Board observes that this finding is based on both the infeasibility of assemblage at the time of the grants and on the changing real estate market conditions in the neighborhood surrounding the site; and

WHEREAS, turning to the concerns of Community Board 5 and the Hotel Trades Council (the "Opposition"), as noted above, the Board finds that the proposal is not in conflict with the Bella Vista case and is consistent with the Board's precedent applying Bella Vista and disagrees that Lot 7502's development rights' value, such as they were, could be realized in 2003; similarly, the Board disagrees that there was an active market for hotel development in the neighborhood surrounding the site in 2003 and finds that the evidence in the record supports the applicants' assertion that hotel development was not occurring in the neighborhood in 2003; as for the Opposition's concerns regarding precedent, the Board observes that, under Bella Vista, it must determine on a case-by-case basis whether a proposed lot merger undermines a prior variance; and

WHEREAS, the Board has considered the Opposition's remaining contention and finds them without merit and/or irrelevant to the instant application; and

WHEREAS, based upon its review of the record, the Board does not object to the proposed merger of Lots 30, 31, 32, 49, and 7502; and

WHEREAS, additionally, the Board does not object to a transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32, subsequent to the proposed zoning lot merger, but notes that any further changes to Lots 49 and 7502 that are inconsistent with prior approvals are subject to the Board's review and approval.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolutions, having been adopted on January 29, 1980 and October 28, 2003, so that as

amended this portion of the resolutions shall read: "to permit the merger of Lots 49, 7502, 30, 31, and 32 and the associated modifications to the BSA-approved site plan, *on condition* that all site conditions will comply with drawings marked 'Received November 5, 2014'-(5) sheets; and *on further condition*:

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB's review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board's jurisdiction, including modifications to the buildings on the site;

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 16, 2014.

142-92-BZ & 289-13-BZ

APPLICANT – Preserve Park Slope, Inc. c/o Albert K. Butzel, for New York Methodist Hospital, owner.

SUBJECT – Application November 3, 2014 – Rehearing: To request a reargument or rehearing of the Board's decision of June 17, 2014 in which the Board granted a variance that allowed NY Methodist Hospital to build a new ambulatory care facility on the property identified above. R6, R6B, R7B zoning districts.

PREMISES AFFECTED – 506 and 473-541 6th Street, Eighth Avenue, 5th Street and Sixth Street, Block 1084, Lot(s) 39, 164, 1001, 1084, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Request for Rehearing Deny.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application pursuant to 2 RCNY § 1-12.4 to reargue BSA Cal. Nos. 289-13-BZ and 142-92-BZ, or, in the alternative, pursuant to 2 RCNY § 1-12.5, to rehear BSA Cal. Nos. 289-13-BZ and 142-92-BZ; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site comprises the majority of Block 1084; it includes Tax Lots 39, 164, 1001, and 1002, and has frontages along Fifth Street, Sixth Street, Seventh Avenue, and Eighth Avenue; and

WHEREAS, on June 17, 2014, under BSA Cal. No. 289-13-BZ, the Board granted a variance pursuant to ZR §

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72-21 to allow the expansion and redevelopment of New York Methodist Hospital (the "Hospital") contrary to the applicable provisions of the Zoning Resolution for FAR, lot coverage, rear setback, rear yard, rear yard equivalent, and signage; and

WHEREAS, in addition, on that same date, under BSA Cal. No. 142-92-BZ, the Board adopted an amendment to an existing special permit to allow certain changes to the parking facility at the site; and

WHEREAS, this application is filed by a coalition of neighbors known as Preserve Park Slope (the "Applicant"), which, through counsel, opposed the Board's June 17, 2014 grants; and

WHEREAS, the Hospital, through counsel, submitted testimony opposing the application; and

WHEREAS, the Applicant seeks a rehearing of BSA Cal. Nos. 289-13-BZ and 142-92-BZ pursuant to Rule 1-12.4, on the ground that the Board misapprehended facts relevant to those applications; and

WHEREAS, the Applicant asserts that the Hospital's programmatic needs, which formed the basis for the Board's June 17, 2014 grants, were misapprehended by the Board; and

WHEREAS, in particular, the Applicant contends that the Hospital's programmatic needs were insufficiently established in the prior grants, as evidenced by certain statements included in reports issued by two credit ratings agencies on August 1, 2014 (the "Reports"); the Reports include information on the potential financing of the Hospital expansion and are issued to disclose to potential purchasers of the Hospital's bonds the extent to which the Hospital will be able to ensure repayment of the bonds; in essence, the Reports are examination of the financial feasibility of the proposed expansion; and

WHEREAS, Rule 1-12.4 provides, in relevant part, that:

The Board will not grant a request to reargue a case which was denied, dismissed, or approved unless the applicant shows that the Board misapprehended the relevant facts or misapplied any controlling principles of law, including the Zoning Resolution ...; and

WHEREAS, the Board observes that the Reports were issued on August 1, 2014, approximately six weeks *after* it granted the variance and the amendment to the special permits on June 17, 2014; and

WHEREAS, accordingly, the Board finds that it could not logically have misapprehended any facts contained within the Reports; the Board cannot have misapprehended that which did not exist; and

WHEREAS, moreover, the Board finds that even if the Reports had been available for review during the hearing process, they would not be "relevant facts" in determining whether the Hospital had sufficiently established its programmatic needs since the Board does not consider an institution's credit rating as a factor in examining the institution's programmatic needs; the Board does not

examine the financial feasibility of an institution's proposal; rather, the Board limits its analysis to whether the proposal satisfies the institution's programmatic needs; and

WHEREAS, thus, the Board finds that the substance and timing of the Reports make them irrelevant to the Board's grants; and

WHEREAS, the Applicant seeks, in lieu of a rehearing pursuant to Rule 1-12.4, a rehearing of BSA Cal. Nos. 289-13-BZ and 142-92-BZ pursuant to Rule 1-12.5; and

WHEREAS, Rule 1-12.5 provides, in relevant part, that:

The Board will not grant a request to rehear a case which was denied, dismissed, or withdrawn with prejudice unless (1): substantial new evidence is submitted that was not available at the time of the initial hearing, (2) there is a material change in plans or circumstances, or (3) an applicant is filed under a different jurisdictional provision of the law...; and

WHEREAS, the Board finds that Rule 1-12.5, by its terms, is inapplicable to the Board's actions under BSA Cal. Nos. 289-13-BZ and 142-92-BZ, because these applications were *granted* and this rule applies only where an application was "denied, dismissed, or withdrawn"; and

WHEREAS, based on the foregoing, the Board finds that the Applicant has not provided a basis to allow reargument or rehearing of BSA Cal. Nos. 289-13-BZ and 142-92-BZ.

Therefore it is Resolved, that the subject application, seeking a reargument or a rehearing of BSA Cal. Nos. 289-13-BZ and 142-92-BZ, is hereby *denied*.

Adopted by the Board of Standards and Appeals, December 16, 2014.

148-03-BZ

APPLICANT – Goldman Harris LLC, for The Flower House Condominium, owners; Northwest Real Estate LLC, lessee.

SUBJECT – Application April 9, 2014 – Amendment of a previously approved Variance (§72-21) the conversion of a three-story and four-story and a twelve-story existing manufacturing buildings to residential use above the ground floor and now to proposed the unused development rights for incorporation into a new as-of-right hotel. M1-6 zoning district.

PREMISES AFFECTED –111/113 West 28th Street, north side of West 28th Street between Sixth and Seventh Avenue, Block 804, Lot(s) 1101-1105, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

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WHEREAS, this is an application to reopen and amend four existing variances to facilitate the transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32; and

WHEREAS, a public hearing was held on this application on September 23, 2014, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends disapproval of the application, citing the following concerns regarding the proposed amendment to BSA Cal. No. 148-03-BZ to permit the transfer of development rights from Lot 7502 to Lots 30, 31, and 32: (1) that hotel development was entirely possible and foreseeable with unused development rights in 2003; (2) that there was an active hotel market in the neighborhood surrounding the site in 2003; (3) that an assemblage was possible in 2003 but intentionally not pursued by the owner of Lot 7502; (4) that permitting the transfer would set a negative precedent that would allow variance sites to receive a windfall; (5) that such precedent would encourage conversion of commercial/manufacturing space to residential with no affordability requirements; (6) that Lot 7502's condominium offering plan contemplated the transfer of unused development rights; and (7) that Lots 30, 31, and 32 can be developed without Lot 7502's development rights but rather with Lot 49's development rights (through Lot 44), which it endorses; and

WHEREAS, the Hotel Trades Council submitted testimony in opposition to the application, citing the following concerns: (1) that hotel development was entirely possible and foreseeable with unused development rights in 2003; (2) that there was an active hotel market in the neighborhood surrounding the site in 2003; and (3) that allowing the proposed transfer of development rights from Lot 7502 to Lots 30, 31, and 32 undermines the (e) finding that the Board made in BSA Cal. No. 148-03-BZ; and

WHEREAS, the application is brought on behalf of the owners of Lots 30, 31, 32, 49, and 7502 (collectively, "the applicants"); and

WHEREAS, the owner of Lots 30, 31, and 32 (105-109 West 28th Street) (the "Development Parcel") seeks the Board's authorization to form a zoning lot with two existing sites under the Board's jurisdiction: Lot 7502 (111-113 West 28th Street) (the "Flower House Condominium") and Lot 49 (114-120 West 29th Street) (the "29th Street Buildings"); collectively, the lots comprise the subject site; and

WHEREAS, the site has 107.17 feet of frontage along West 28th Street, 85 feet of frontage along West 29th Street, and 18,976.46 sq. ft. of lot area; it is partially within a C6-4X zoning district and partially within an M1-6 zoning district; and

WHEREAS, the site is occupied by seven buildings; the 29th Street Buildings include the four-story building located at 114 West 29th Street (which has 7,337 sq. ft. of floor area), the 12-story building located at 116-118 West 29th Street (which has 42,908 sq. ft. of floor area), and the three-story building located at 120 West 29th Street (which has 5,727 sq. ft. of floor area); the Flower House Condominium is a seven-story building (which has 21,305 sq. ft. of floor area); the Development Parcel (Lots 30, 31, and 32) is occupied by three, four-story buildings, which are occupied by various uses, including residences, a florist supply establishment, a wholesale florist, and a retail store; and

WHEREAS, the applicants represent that Lot 49 has approximately 27,364 sq. ft. of unused development rights available for transfer to Lots 30, 31, and 32 and that Lot 7502 has approximately 20,993 sq. ft. of unused development rights available for transfer to Lots 30, 31, and 32; and

WHEREAS, the applicants state that Lot 7502 has been subject to the Board's jurisdiction since October 28, 2003, when, under BSA Cal. No. 148-03-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing residential use within portions of a building on a site within an M1-6 zoning district, contrary to use regulations; on April 4, 2006, the Board approved an amendment to this grant, which authorized the construction of a mezzanine at the penthouse level; and

WHEREAS, the applicants state that Lot 49 was historically known as Lots 49, 50, and 52; historic Lot 49 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 902-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing 12-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; historic Lot 50 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 1097-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing three-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; historic Lot 52 has been subject to the Board's jurisdiction since January 29, 1980, when, under BSA Cal. No. 1096-79-BZ, the Board granted a variance pursuant to ZR § 72-21 authorizing the conversion of an existing three-story manufacturing building to a multiple dwelling on a site within an M1-6 zoning district, contrary to use regulations; and

WHEREAS, thus, the Board notes that each of the subject variances involved a change of use of an existing building with little or no impact on bulk; and

WHEREAS, the applicants now seek amendments to the subject variances to reflect the merger of Lots 30, 31, 32, 49, and 7502 in order to facilitate the transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32; and

WHEREAS, the applicants also propose to modify the site plans of the four variances to reflect the merger of Lots 30, 31, 32, 49, and 7502; and

WHEREAS, the applicants represent that the proposed

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zoning lot merger and development rights transfer will not have any effect on the existing buildings located on Lots 49 and 7502; and

WHEREAS, in addition, the applicants contend that the proposed transfer of development rights is consistent with the Court's decision in Bella Vista v. Bennett, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, the applicants assert that a transfer of the unused development rights from Lots 49 and 7502 is allowed because it is not in conflict with any of the Board's prior actions with respect to those lots; and

WHEREAS, the applicants state that the applications under BSA Cal. Nos. 902-79-BZ, 1097-79-BZ, and 1096-79-BZ reflect that the unused development rights were not considered in the Board's analysis; therefore, the applicants assert that it may be presumed that at the time the rights did not have a value; consequently, allowing Lot 49 to merge with and transfer its developments rights to Lots 30, 31, and 32 would not undermine any of the Board's findings in those grants; and

WHEREAS, as for BSA Cal. No. 148-03-BZ, the applicant asserts that the excess development rights of Lot 7502 did not have any value in 2003, because there were no receiving sites available; in support of this assertion, the applicants analyzed whether any parcel adjacent to Lot 7502 was a viable development site as of 2003; the analysis took into account the ownership of the site (whether it was commonly owned with adjacent parcels such that a development assemblage was possible), the lot width and lot area of the site, the permitted uses at the site, and the degree to which the site could be further developed independent of the available development rights; and

WHEREAS, in addition, the applicant states that the proposed transfer will occur more than ten years after the Board's original grant and that there have been substantial and unforeseeable changes in the economic climate of the city and the real estate market since 2003, including a significant increase in the demand for hotels in the neighborhood surrounding the site; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information about the hotel development market in the neighborhood surrounding the site as of 2003; and

WHEREAS, in response, the applicant provided an analysis, which reflects that there were no land use transfers for hotel use between 2001 and 2004 in the area bound by Sixth Avenue, Seventh Avenue, West 24th Street, and West 31st Street; further, during this period there was a significant downturn in the economy, resulting in little to no hotel development in the area; hence, there was no market for development rights to facilitate hotel development at the time the variance was under consideration by the Board; and

WHEREAS, thus, the applicants state that an approval of the requested development rights transfer from Lots 49 and 7502 do not undermine the integrity of the Board's earlier

findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in Bella Vista; and

WHEREAS, the applicants conclude that the use of the development rights as a result of the proposed zoning lot merger is therefore not inconsistent with the Board's prior approvals; and

WHEREAS, the Board notes that Bella Vista concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance to permit operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership—for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, inter alia, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board notes that, unlike in Bella Vista, the transferring sites (Lots 49 and 7502) and the receiving site (Lots 30, 31, and 32) have been under separate, unrelated ownership since the Board's grants; therefore, the owners of Lots 49 and 7502 lacked control over the timing and nature of the development of Lots 30, 31, and 32; and

WHEREAS, the Board also notes that a brief period of time elapsed between the date of the Bella Vista variance grant and the date of the subsequent permit application which also distinguishes that case from the proposed development rights transfer under review in the subject application; and

WHEREAS, the Board notes that in Bella Vista, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, while the variances for the subject site were granted in 1980 (34 years before the filing of the instant application) and in 2003 (10 years before the filing of the instant application); and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the Bella Vista case from the instant case and supports the conclusion that the use of Lots 49 and 7502's unused development rights was not foreseeable by the owner of Lots 30, 31, and 32 or the Board; and

WHEREAS, the Board finds that, with respect to BSA Cal. Nos. 902-79-BZ, 1097-79-BZ, 1096-79-BZ, and 148-03-BZ, the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) finding, at the time that they were made; and

WHEREAS, the Board observes that this finding is based on both the infeasibility of assemblage at the time of the grants and on the changing real estate market conditions in the neighborhood surrounding the site; and

WHEREAS, turning to the concerns of Community

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Board 5 and the Hotel Trades Council (the "Opposition"), as noted above, the Board finds that the proposal is not in conflict with the Bella Vista case and is consistent with the Board's precedent applying Bella Vista and disagrees that Lot 7502's development rights' value, such as they were, could be realized in 2003; similarly, the Board disagrees that there was an active market for hotel development in the neighborhood surrounding the site in 2003 and finds that the evidence in the record supports the applicants' assertion that hotel development was not occurring in the neighborhood in 2003; as for the Opposition's concerns regarding precedent, the Board observes that, under Bella Vista, it must determine on a case-by-case basis whether a proposed lot merger undermines a prior variance; and

WHEREAS, the Board has considered the Opposition's remaining contention and finds them without merit and/or irrelevant to the instant application; and

WHEREAS, based upon its review of the record, the Board does not object to the proposed merger of Lots 30, 31, 32, 49, and 7502; and

WHEREAS, additionally, the Board does not object to a transfer of unused development rights from Lots 49 and 7502 to Lots 30, 31, and 32, subsequent to the proposed zoning lot merger, but notes that any further changes to Lots 49 and 7502 that are inconsistent with prior approvals are subject to the Board's review and approval.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolutions, having been adopted on January 29, 1980 and October 28, 2003, so that as amended this portion of the resolutions shall read: "to permit the merger of Lots 49, 7502, 30, 31, and 32 and the associated modifications to the BSA-approved site plan, *on condition* that all site conditions will comply with drawings marked 'Received November 5, 2014'-(5) sheets; and *on further condition*:

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB's review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board's jurisdiction, including modifications to the buildings on the site;

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect;

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 16, 2014.

964-87-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilt Petroleum, Ink., owner; Lotus Management Group II, LLC, lessee.

SUBJECT – Application April 21, 2014 – Amendment to a previously approved Variance for the operation of an Automotive Service Station (UG 16B), with accessory uses.

The Amendment seeks to convert a portion of a service bay to an accessory convenience store; Extension of Time to obtain a Certificate of Occupancy which expired on May 10, 2012; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 786 Burke Avenue, aka 780-798 Burke Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy for the continued operation of a gasoline service station (Use Group 16), which expired on May 10, 2012, and an amendment to permit the conversion of a portion of the station to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on October 7, 2014 after due notice by publication in *The City Record*, with a continued hearing on November 18, 2014, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of the intersection of Burke Avenue and Barnes Avenue, partially within a C1-3 (R6) zoning district and partially within an R6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 1957 when, under BSA Cal. No. 52-57-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times, until its expiration on October 22, 1982; and

WHEREAS, on February 6, 1990, under the subject calendar number, the Board re-established the variance pursuant to ZR § 11-411 to legalize the existing gasoline service station with accessory uses and parking for more than five automobiles, for a term of ten years; and

WHEREAS, on January 15, 2002, the Board granted a ten-year extension of the term of the variance, which expired on February 6, 2010, and on May 10, 2011, the Board

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granted a further extension of term, a one-year extension of time to obtain a certificate of occupancy, and an amendment to permit a change in the hours of operation of the service station and to legalize public parking (Use Group 8) at the site; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained by May 10, 2012; as such, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, in addition, the applicant seeks an amendment to permit the conversion of a portion of the gasoline service station currently used as accessory office and storage space to an accessory convenience store; and

WHEREAS, the applicant notes that the one-story gasoline service station building has approximately 2,580 sq. ft. of floor area (0.15 FAR); and

WHEREAS, the applicant represents that the accessory convenience store will occupy approximately 663 sq. ft. of the existing floor area of the building; the applicant notes that the proposal reflects the preservation of three service bays; and

WHEREAS, the applicant also states that the proposal complies with DOB Technical Policy and Procedure Notice No. 10/1999, which sets forth the requirements for convenience stores accessory to gasoline and automotive service stations; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide landscaping in accordance with the approved plans, including replacement of evergreen trees, as appropriate; (2) replace fence slats in disrepair; (3) remove excessive signage; and (4) remove all debris from the site, including abandoned gasoline pumps, junked automobiles, and weeds; and

WHEREAS, in response, the applicant provided: (1) a revised site plan indicating that landscaping and fence slats would be replaced and maintained, as necessary; and (2) photographs showing the removal of excessive signage (including banners) and debris from the site; and

WHEREAS, based on its review of the record, the Board finds that the requested extension of term and amendment are appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 6, 1990, so that as amended the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 16, 2016 and to permit the conversion of a portion of the building to an accessory convenience store; *on condition* that the use and operation of the site shall substantially conform to the approved drawings, filed with this application and marked ‘December 12, 2014’ - (7) sheets; and *on further condition*:

THAT the accessory convenience store shall be limited to a maximum of 663 sq. ft. of floor area;

THAT a maximum of ten parking spaces on the site shall be made available for rent, and such parking spaces shall be rented on a monthly basis only;

THAT the hours of operation for gasoline sales on the site shall be 24 hours per day, seven days per week, and the hours of operation for the repair use on the site shall be Monday through Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays;

THAT all signage shall comply with C1 zoning district sign regulations;

THAT all landscaping and fencing shall be maintained;

THAT all lighting shall be directed downward and away from adjacent residential uses;

THAT the site shall be maintained free of debris and graffiti;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by December 16, 2016;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 220077976)

Adopted by the Board of Standards and Appeals, December 16, 2014.

164-04-BZ

APPLICANT – Warsaw Burstein, LLP., for 2241 Westchester Avenue Realty Corp., owner; Castle Hill Fitness Group, LLC., lessee.

SUBJECT – Application April 25, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness Center*) occupying the entire second floor of a two story building which expired on July 15, 2014. R6/C2-4 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, Northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a physical culture establishment (“PCE”), which expired on July 15, 2014; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in *The City Record*, and then to decision on December 16, 2014; and

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Westchester Avenue and Glebe Avenue, within a C2-2 (R6) zoning district;

WHEREAS, the site has 22,790 sq. ft. of lot area and is occupied by a two-story commercial building with approximately 25,290 sq. ft. of floor area (1.11 FAR); and

WHEREAS, the PCE occupies approximately 12,695 sq. ft. of floor area (0.56 FAR) on the second story; and

WHEREAS, the PCE is operated as a Planet Fitness; and

WHEREAS, on February 7, 2006, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, the legalization of a PCE operated as Gotham City Fitness, for a term of ten years from the date that the PCE began operating, to expire on July 15, 2014; and

WHEREAS, on October 5, 2010, the Board authorized an amendment to the grant to permit certain modifications to the BSA-approved plans, a change in the hours of operation, and a change in operator from Gotham City Fitness to Planet Fitness; and

WHEREAS, the applicant now seeks a further extension of term; and

WHEREAS, at hearing, the Board directed the applicant to: (1) demonstrate that the fire alarm and sprinkler systems have been installed and that the PCE has a Place of Assembly ("PA") certificate of operation; (2) determine whether the open Environmental Control Board violation regarding the air conditioning units on the building's roof are related to the PCE; and (3) remove graffiti from the exterior of the building and implement a graffiti management plan; and

WHEREAS, in response, the applicant: (1) provided copies of all permit applications and signoffs and provided a copy of the PA certificate of operation; and (2) stated that the violation relates to units that service the PCE and that permits will be obtained to legalize the installation; and

WHEREAS, as to the graffiti, the applicant represents that it is working with local elected officials to combat the presence of graffiti at the site; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 7, 2006, so that as amended the resolution reads: "to grant an extension of the special permit for a term of ten years from the prior expiration; on condition that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received September 19, 2014'-(4) sheets; and on further condition: *on condition*:

THAT this grant shall be limited to a term of ten years,

to expire on July 15, 2024;

THAT graffiti shall be removed within 48 hours of its appearance at the site;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy for the operation of the PCE shall be obtained by December 16, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT Department of Buildings shall ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 210053378)

Adopted by the Board of Standards and Appeals, December 16, 2014.

164-94-BZ

APPLICANT – Jeffrey Chester, Esq., for Tuckahoe Realty LLC., owner; LRHC Park Chester NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of physical culture establishment (*Lucille Roberts*), which expired on March 1, 2014. C1-2/R6 zoning district.

PREMISES AFFECTED – 84 Hugh Grant Circle, Cross Bronx Expressway Sr. South, Block 3794, Lot 109, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to February 10, 2015, at 10 A.M., for continued hearing.

APPEALS CALENDAR

300-08-A

APPLICANT – Law office of Marvin B. Mitzner LLC, for Steven Baharestani, owner.

SUBJECT – Application April 24, 2014 – Extension of time to complete construction and obtain a Certificate of Occupancy for the construction of a hotel under common law vested rights. M1-2 /R5-B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street between 39th and 40th Avenues, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 10, 2014, at 10 A.M., for continued hearing.

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65-14-A thru 88-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP., for Block 7092 LLC, owner.

SUBJECT – Application April 29, 2014 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1(SRD) zoning district

PREMISES AFFECTED – Lemon Drop and Apricot Court, Block 7105, Lots 148 thru 171, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for decision, hearing closed.

113-14-A

APPLICANT – Howard Goldman, Esq., for Speakeasy 86 LLC c/o Newcastle Realty Service, owner.

SUBJECT – Application May 29, 2014 – Appeal seeking revocation of a permit issued that allows a nonconforming use eating/drinking establishment to resume after being discontinued for several years. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Street, northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for decision, hearing closed.

128-14-A

APPLICANT – Bryan Cave LLP, for Alicat Family LLC & AEEE Family LLC, owner.

SUBJECT – Application June 6, 2014 – Appeal challenging DOB determination that the proposed off-street loading berth is not accessory to a medical office. C2-5/R7A zoning district.

PREMISES AFFECTED – 47 East 3rd Street, East 3rd Street between First and Second Avenues, Block 445, Lot 62, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to February 24, 2015, at 10 A.M., for decision, hearing closed.

192-14-A thru 198-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Mantione, owner.

SUBJECT – Application August 15, 2014 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2(SRD) zoning district.

PREMISES AFFECTED –

10 Winslow Place, Block 6373, Lot 40

12 Winslow Place, Block 6373, Lot 42

18 Winslow Place, Block 6373, Lot 43

20 Winslow Place, Block 6373, Lot 45

26 Winslow Place, Block 6373, Lot 145

30 Winslow Place, Block 6373, Lot 146

32 Winslow Place, Block 6373, Lot 147

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 6, 2015, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2-13-BZ

CEQR #13-BSA-075R

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.

SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 6, 2012, acting on DOB Application No. 520026695, reads in pertinent part:
Present application is filed to legalize an enlargement of a non-conforming and non-complying building not permitted as per 52-40 and 54-30 of the NYC Zoning Resolution ...

WHEREAS, this is an application under ZR § 72-21, to legalize, on a site within an R3A zoning district, the enlargement of a non-complying one-story building and the extension of a non-conforming Use Group 6 retail use, which are contrary to ZR §§ 52-40 and 54-30; and

WHEREAS, a public hearing was held on this

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application on April 29, 2014, after due notice by publication in the *City Record*, with continued hearings on September 9, 2014, November 18, 2014, and December 9, 2014, and then to decision on December 16, 2014; and

WHEREAS, Commissioners Ottley-Brown and Montanez performed examinations of the subject site and premises, and surrounding area; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on the condition that the subject premises not be used as a liquor store or bar; and

WHEREAS, the subject site is an interior triangular lot with approximately 102 feet of frontage on Targee Street, within an R3A zoning district; the site has approximately 2,060 sq. ft. of lot area; and

WHEREAS, the as-of-right development of the subject site is limited to either a residential development with an FAR of 0.5 or a community facility use with an FAR of 1.0; and

WHEREAS, the site is occupied by a non-complying one-story commercial building containing approximately 1,135 sq. ft. of floor area, the non-conforming use of which is as a Use Group 6 food store; and

WHEREAS, prior to 2001, the applicant's predecessor-in-interest enlarged the non-complying building by constructing an addition with approximately 563 sq. ft. of floor area; permits were not obtained for this enlargement; and

WHEREAS, the applicant proposes to legalize the non-complying extension and permit a non-conforming Use Group 6 retail store thereof; and

WHEREAS, in order to legalize the extension of the subject building and permit the extension of the non-conforming use thereof, the applicant seeks a waiver of ZR §§ 52-40 and 54-30, which govern non-complying buildings and non-conforming uses and prohibit the pre-2001 enlargement; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in using or developing the site in conformance and compliance with the applicable zoning regulations: (1) the site's irregular triangular shape, and (2) the site's limited floor area; and

WHEREAS, the applicant notes that when the bulk regulations applicable to the site's R3A zoning district are applied to the site, the buildable floor area of the site is limited to either 1,030 sq. ft. for residential use or 2,060 sq. ft. for community facility use and that the unique shape of the subject site increases the impact of the required yards on the footprint of any as-of-right building, reducing the foot print of an as-of-right residential building on the subject site to 639 sq. ft. or of an as-of-right community facility on the subject site to 977 sq. ft.; and

WHEREAS, the applicant further notes that an as-of-right community facility use of the subject site would require the applicant to develop a two-story building on the site, thereby necessitating an elevator and accessibility features which would further decrease the available floor area of the site, rendering the development inefficient and infeasible; and

WHEREAS, the applicant analyzed four similarly shaped triangular lots along Targee Street within the applicable zoning district and demonstrated that such lots are significantly larger in floor area and as such would permit more useable and efficient floor plans if developed in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant considered the as-of-right development of the site for a single-family house as well as the continued non-conforming retail use of the non-complying building; and

WHEREAS, the applicant concludes that neither alternative would realize a reasonable return; and

WHEREAS, the applicant asserts that only the legalization of the already-constructed non-complying extension and an expansion of the non-conforming use would yield a reasonable return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in strict conformance and compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposal will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant asserts that the surrounding area is characterized by mixed uses including significant retail use with frontage on Targee Street; and

WHEREAS, the applicant represents that (1) the majority of the subject structure has existed for commercial use since 1947 and that the subject enlargement was constructed by the applicant's predecessor over ten years prior to the instant application, (2) that Targee Street contains several non-residential uses and is already burdened by significant traffic, and (3) that the surrounding area is characterized by a mix of uses which includes single-story retail and convenience stores; and

WHEREAS, the applicant further represents that the existing enlargement does not directly impact any of the adjoining properties in that the adjacent property on Roff Street is vacant and the two properties on Metcalfe Street which are contiguous to the subject site are adjacent to the legal, existing, non-conforming food market; and

WHEREAS, the Board finds that the character of the area is mixed-use and that the legalization of the already-existing non-complying structure and expansion of the pre-existing non-conforming use will not impact nearby complying and/or conforming uses and, accordingly, finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be

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detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's history of development, size and shape, and the limited economic potential of conforming uses on the lot; and

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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 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. 13-BSA-075R, dated October 25, 2012 ; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to legalize, on a site within an R3A zoning district, the enlargement of a non-complying one-story building and to permit the extension of a non-conforming Use Group 6 retail use thereof, contrary to ZR §§ 52-40 and 54-30; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "October 21, 2014"– five (5) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically filed DOB/other jurisdiction objection(s); and

THAT a Certificate of Occupancy for the subject site shall be obtained by December 16, 2018; and

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted; and

THAT all signage at the subject site shall conform to the requirements of a C-1 district for both the existing retail use and the proposed retail use; and

THAT the non-conforming use of the legal non-complying structure and the subject non-complying enlargement shall be limited to a Use Group 6 retail use; and

THAT the hours of operation of for the existing and proposed retail shall be Monday through Saturday, from 7:00 a.m. to 11:00 p.m., and Sunday, from 7:00 a.m. to 10:00 p.m.

Adopted by the Board of Standards and Appeals, December 16, 2014.

119-14-BZ CEQR #14-BSA-163M

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1151 Third Avenue LLC, owner; Flywheel Sport Inc., lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Flywheel Sports*) of the second and third floor of the existing building. Located within a C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 5, 2014, acting on DOB Application No. 110365453, reads, in pertinent part:

Proposed work of a Physical Culture Establishment at 2nd, 3rd, 4th and 5th floors is not permitted as-of-right in Zoning C1-9 district...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the operation of a physical culture establishment ("PCE") operating on the second and third story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in the *City Record*, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan,

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recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Third Avenue and East 67th Street, in Manhattan;

WHEREAS, the site has approximately 25.42 sq. ft. of frontage along Third Avenue and approximately 100 sq. ft. of frontage along East 67th Street, with approximately 2,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story commercial building with approximately 9,795 sq. ft. of floor area (3.9 FAR); and

WHEREAS, the PCE shall occupy the second and third floor of the building, comprising approximately 3,918 sq. ft. of floor area; and

WHEREAS, the PCE shall be operated under the trade name Flywheel; and

WHEREAS, the hours of operation for the PCE are seven days a week, from 5:30 a.m. to 9:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-163M, dated May 5, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the operation of a PCE operating on the second and third stories of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed

with this application marked “August 6, 2014”- Three (3) sheets; *on further condition:*

THAT the term of the PCE grant will expire on December 16, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 December 16, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

120-14-BZ

CEQR #14-BSA-164M

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1151 Third Avenue, owner; Upper East Fitting Room LLC, lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Fitting Room*) on the fifth floor of the existing building. C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, north East corner of 3rd Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 5, 2014, acting on DOB Application No. 110365453, reads, in pertinent part:

Proposed work of a Physical Culture Establishment at 2nd, 3rd, 4th and 5th floors is not permitted as-of-

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right in Zoning C1-9 district...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the operation of a physical culture establishment (“PCE”) operating on the fifth story of a five-story mixed commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in the *City Record*, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Third Avenue and East 67th Street, in Manhattan;

WHEREAS, the site has approximately 25.42 sq. ft. of frontage along Third Avenue and approximately 100 sq. ft. of frontage along East 67th Street, with approximately 2,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story commercial building with approximately 9,795 sq. ft. of floor area (3.9 FAR); and

WHEREAS, the PCE shall occupy the fifth floor of building, comprising approximately 1,959 sq. ft. of floor area; and

WHEREAS, the PCE shall be operated under the trade name Flitting Room; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 5:30 a.m. to 10:00 p.m., and on Saturday and Sunday from 6:30 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit and to ensure that the continued operation of the PCE does not negatively impact the building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-164M dated May 30, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the operation of a PCE operating on the fifth story of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “August 6, 2014”- Three (3) sheets; *on further condition*:

THAT the term of the PCE grant will expire on December 16, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 December 16, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

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121-14-BZ

CEQR #14-BSA-165M

APPLICANT – Law office of Jay Goldstein, PLLC, for 1151 Third Avenue, owner; Strengthen Lengthen Tone LLC., lessee.

SUBJECT – Application June 2, 2014 – Special Permit (§73-36) to allow for the operation of a physical culture establishment (SLT) on the 4th floor of the existing building, C1-9 zoning district.

PREMISES AFFECTED – 1151 Third Avenue aka 201 East 67th Street, northeast corner of 3rd Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 5, 2014, acting on DOB Application No. 110365453, reads, in pertinent part:

Proposed work of a Physical Culture Establishment at 2nd, 3rd, 4th and 5th floors is not permitted as-of-right in Zoning C1-9 district...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the operation of a physical culture establishment (“PCE”) operating on the fourth story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in the *City Record*, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Third Avenue and East 67th Street, in Manhattan;

WHEREAS, the site has approximately 25.42 sq. ft. of frontage along Third Avenue and approximately 100 sq. ft. of frontage along East 67th Street, with approximately 2,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by five-story commercial building with approximately 9,795 sq. ft. of floor area (3.9 FAR); and

WHEREAS, the PCE shall occupy the fourth floor of the building, comprising approximately 1,959 sq. ft. of floor area; and

WHEREAS, the PCE shall be operated under the trade name SLT; and

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 6:00 a.m. to 9:30 p.m., and on

Saturday and Sunday from 8:00 a.m. to 7:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-165M, dated May 5, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the operation of a PCE operating on the fourth story of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “August 6, 2014”- Three (3) sheets; *on further condition*:

THAT the term of the PCE grant will expire on December 16, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT 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 December 16, 2018;

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

151-14-BZ

CEQR #15-BSA-019M

APPLICANT – Law Office of Fredrick A. Becker, for Fifth Partners, LLC., owner; Exhale Enterprises Inc., owner.

SUBJECT – Application June 26, 2014 – Special Permit (§73-36) to legalize the operation of a physical culture establishment/ yoga studio (*Exhale Enterprises*) on a portion of the ground floor of the subject 12-story commercial building, C6-4A zoning district.

PREMISES AFFECTED – 19 West 21st Street, northerly side of West 21st Street, 309' 10" westerly of Fifth Avenue, Block 823, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 25, 2014, acting on DOB Application No. 121995494, reads, in pertinent part:

ZR 32-10 – Proposed Physical Culture Establishment at zoning C6-4A is not permitted as-of-right...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site within a C6-4A zoning district, within the Ladies’ Mile Historic District, a physical culture establishment (“PCE”) on the first floor of a 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in the *City Record*, and then to decision on December 16, 2014; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Brown; and

WHEREAS, Community Board 5, Manhattan, elected to waive any comments to the instant application; and

WHEREAS, the subject site is located on the north side of West 21st Street, between 5th Avenue and the Avenue of the

Americas, in a C6-4A zoning district within the Ladies’ Mile Historic District; and

WHEREAS, the site has approximately 105 feet of frontage along West 21st Street and 10,377 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE occupies 2,764 sq. ft. of floor area on the first floor of the subject building; and

WHEREAS, the PCE operates as Exhale Enterprises LLC; and

WHEREAS, the PCE’s hours of operation are Monday through Friday, from 6:00 a.m. to 9:00 p.m., and on Saturday and Sunday from 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the PCE does not interfere with any pending public improvement project; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect No. 15-6808, issued on April 21, 2014; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 15-BSA-019M, dated September 3, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4A zoning district, within the Ladies’ Mile Historic District, the operation of a PCE on the first story of a 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work will substantially conform to

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drawings filed with this application marked "September 3, 2014"- three (3) sheets; *on further condition:*

THAT the term of the PCE grant will expire on June 1, 2024;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT accessibility compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT 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 December 16, 2018;

THAT this approval is limited to the relief granted by the Board in response to specifically cited objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

208-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application August 29, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 119 East 7th Road, Block 15454, Lot 21. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, December 16, 2014.

286-12-BZ

APPLICANT – Eric Palatnik, P.C., for People of Destiny Ministries International, Inc., owners.

SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story UG 4A House of Worship (*People of Destiny Church*), contrary to coverage ratio (§24-11),. R6 zoning district.

PREMISES AFFECTED – 1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue,

Block 1399, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to March 3, 2015, at 10 A.M., for continued hearing.

343-12-BZ

APPLICANT – Akerman Senterfitt, LLP., for Ocean Ave Education Support, Inc., owner.

SUBJECT – Application December 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Brooklyn School for Medically Frail Children*) with dormitory facilities in a split zoning lot, contrary to lot coverage(§24-11), yard requirements (§24-382, §24-393, §24-33) and use regulations (§22-13). R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, between Dorchester Road and Ditmas Avenue, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 24, 2014, at 10 A.M., for continued hearing.

350-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of an 11-story community facility/residential building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to February 3, 2015, at 10 A.M., for adjourned hearing.

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 6,

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2015, at 10 A.M., for decision, hearing closed.

94-14-BZ

APPLICANT – Dennis D. Dell'Angelo, for Rivka Shapiro, owner.

SUBJECT – Application May 5, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1150 East 22nd Street, west side of East 22nd Street, 140' north of Avenue "K", Block 7603, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for decision, hearing closed.

REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 16, 2014

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.

287-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 138 Roma Avenue, Block 0408, Lot 80025. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the east side of Roma Avenue between Garibaldi Avenue and Ebbets Street, within an R3X zoning district; and

WHEREAS, the site has 20 feet of frontage along Roma Avenue and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 815 sq. ft. of floor area (0.40 FAR); the existing site has the following yard non-compliances: a front yard depth of 2'-9" (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of 18'-9" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and side yards with widths of 4'-2" (eastern side yard) and 1'-3" (western side yard) (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 14'-6", a rear yard depth of 18'-0", an southern side yard width of 5'-0", and northern side yard width of 6'-3½"; and

WHEREAS, in addition, the applicant represents that the proposed building may be less than 8'-0" from the buildings directly north and south of the site; and

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WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a front yard depth of 14'-6", a rear yard depth of 18'-0", and a minimum distance of less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front, side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested front, rear, and side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from 2'-9" to 14'-6", and increases in the width of both side yards; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. of floor area (0.54 FAR), a minimum front yard depth of 14'-6", a minimum rear yard depth of 18'-0", and side yards with minimum widths of 5'-0" and 6'-3½", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the buildings directly north and south of the site;

THAT this approval shall be limited to the relief

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granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

291-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 19 Millbank Road, Block 0409, Lot 10027, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the

Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the north side of Millbank Road, west of Cedar Grove Avenue, within an R3X zoning district; and

WHEREAS, the site has 40 feet of frontage along Millbank Road and 2,400 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 720 sq. ft. of floor area (0.30 FAR); the existing site has the following yard non-compliances: a front yard depth 6’-8” (a minimum front yard depth of 18’-0” is required, per ZR § 23-45); a rear yard depth of 2’-9” (a minimum rear yard depth of 20’-0” is required, per ZR §§ 23-47 and 23-52); side yards with widths of 3’-9” (western side yard) and 2’-6” (eastern side yard) (the requirement is two side yards with minimum widths of 5’-0”, and a minimum distance between adjacent buildings along a side lot line of 8’-0”, per ZR § 23-461); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-52; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,272 sq. ft. of floor area (0.53 FAR); the new building will provide a front yard depth of 18’-0”, a rear yard depth of 16’-1”, an eastern side yard width of 10’-5”, and western side yard width of 5’-0”; and

WHEREAS, in addition, the applicant states that the proposed building may be less than 8’-0” from the building directly west of the site; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a rear yard depth of 16’-1”, and a minimum distance of less than 8’-0” from the building directly west of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying

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Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side and rear yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from a non-complying 6'-8" to a complying 18'-

0", and increase in the widths of both side yards, and increase in the depth of the rear yard from 12'-8" to 16'-1"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 15, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,272 sq. ft. of floor area (0.53 FAR) and a minimum rear yard depth of 16'-1", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the building directly west of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

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292-14-A

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 19 Milbank Road, Block 0409, Lot 10027, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a single-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Vice- Chair Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is applicant is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, this site is also the subject of a companion application filed under BSA Cal. No. 291-14-BZ, for a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461, 23-47, and 54-313; and

WHEREAS, the subject site is located on the north side of Millbank Road, west of Cedar Grove Avenue, within an R3X zoning district; Millbank Road is an unmapped access road; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 720 sq. ft. of floor area (0.30 FAR); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,272 sq. ft. of floor area (0.53 FAR);

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated December 2, 2014, the Fire Department states that it has reviewed the proposal and has no objections, provided that: (1) the entire building is fully-sprinklered in conformity 2014 Building Code; (2) combination Smoke/Carbon Monoxide detectors as well NFPA 13D fire sprinklers are installed; (3) exterior walls and floors are constructed of eight-inch Autoclaved Aerated Concrete (AAC) panels (or an approved equivalent), which provide a four-hour fire-resistance rating; (4) penetrations through the AAC floor over parking are firestopped per required the occupancy separation; and (5) the height of the highest window does not exceed 30 feet from grade level below such window; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked “December 15, 2014”- one (1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building shall be fully-sprinklered in conformity with provisions of 2014 Building Code;

THAT combination Smoke/Carbon Monoxide detectors and NFPA 13D fire sprinklers shall be installed;

THAT the exterior walls and floors shall be constructed of eight-inch autoclaved AAC panels (or an approved equivalent), which provide a four-hour fire-resistance rating;

THAT the penetrations through the AAC floor over parking shall be firestopped per required the occupancy separation;

THAT the height of the highest window sill shall not exceed 30 feet from grade level below such window;

THAT this approval shall be limited to the Build to Back program; and

THAT the approved plans shall be considered approved only for portions to the specific relief granted; and

THAT changes to the use or occupancy of the building will be subject to Board review and approval; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

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293-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 23 Neutral Avenue, between Roma Avenue and Cedar Grove Avenue, Block 0409, Lot 20026, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the north side of Neutral Avenue, west of Cedar Grove Avenue, within an R3X zoning district; and

WHEREAS, the site has 40 feet of frontage along Neutral Avenue and 2,880 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 1,055 sq. ft. of floor area (0.36 FAR); the existing site has the following yard non-compliances: a front yard depth 6’-5” (a minimum front yard depth of 18’-0” is required, per ZR § 23-45); a rear yard depth of 3’-4” (a minimum rear yard depth of 20’-0” is required, per ZR §§ 23-47 and 23-52); side yards with widths of 5’-6” (western side yard) and 4’-6” (eastern side

yard) the requirement is two side yards with minimum widths of 5’-0”, and a minimum distance between adjacent buildings along a side lot line of 8’-0”, per ZR § 23-461); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-52; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,272 sq. ft. of floor area (0.44 FAR); the new building will provide a front yard depth of 18’-0”, a rear yard depth of 16’-1”, an eastern side yard width of 16’-0”, and western side yard width of 7’-5”; and

WHEREAS, in addition, the applicant states that the proposed building may be less than 8’-0” from the building directly east of the site; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a rear yard depth of 16’-1”, and a minimum distance of less than 8’-0” from the buildings directly east of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

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WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side and rear yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from a non-complying 6'-5" to a complying 18'-0", and increase in the widths of both side yards beyond the minimum requirement, and increase in the depth of the rear yard from 3'-4" to 16'-1"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to

permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 15, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,272 sq. ft. of floor area (0.44 FAR) and a minimum rear yard depth of 16'-1", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the building directly east of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

294-14-A
APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 23 Neutral Avenue, between Roma Avenue and Cedar Grove Avenue, Block 0409, Lot 20026, Borough of Staten Island.

COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –
Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –
WHEREAS, this is an application to permit the construction of a single-family home that does not front a

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mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Vice- Chair Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is applicant is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, this site is also the subject of a companion application filed under BSA Cal. No. 293-14-BZ, to permit pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, the subject site is located on the north side of Neutral Avenue, west of Cedar Grove Avenue, within an R3X zoning district; Neutral Avenue is an unmapped access road; and

WHEREAS, the site has 40 feet of frontage along Neutral Avenue and 2,880 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 1,055 sq. ft. of floor area (0.36 FAR); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,272 sq. ft. of floor area (0.44 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant requests a waiver of General City Law § 36; and

WHEREAS, by letter dated December 2, 2014, the Fire Department states that it has reviewed the proposal and has no objections, provided that: (1) the entire building is fully-sprinklered in conformity 2014 Building Code; (2) combination Smoke/Carbon Monoxide detectors as well NFPA 13D fire sprinklers are installed; (3) exterior walls and floors are constructed of eight-inch Autoclaved Aerated Concrete (AAC) panels (or an approved equivalent), which provide a four-hour fire-resistance rating; (4) penetrations through the AAC floor over parking are firestopped per required the occupancy separation; and (5) the height of the highest window does not exceed 30 feet from grade level below such window; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked “December 15, 2014”- one (1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building shall be fully-sprinklered in conformity with provisions of 2014 Building Code;

THAT combination Smoke/Carbon Monoxide detectors and NFPA 13D fire sprinklers shall be installed;

THAT the exterior walls and floors shall be constructed of eight-inch autoclaved AAC panels (or an approved equivalent), which provide a four-hour fire-resistance rating;

THAT the penetrations through the AAC floor over parking shall be firestopped per required the occupancy separation;

THAT the height of the highest window sill shall not exceed 30 feet from grade level below such window;

THAT this approval shall be limited to the Build to Back program; and

THAT the approved plans shall be considered approved only for portions to the specific relief granted; and

THAT changes to the use or occupancy of the building will be subject to Board review and approval; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

295-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 58 Seafoam Avenue, between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot 10068, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the

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Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-2 (C1-1) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the south side of Seafoam Street, west of Cedar Grove Avenue, within an R3-2 (C1-1) zoning district; and

WHEREAS, the site comprises Lots 68 and 69; it has 40 feet of frontage along Seafoam Street and 2,400 sq. ft. of lot area; historically, Lot 68 was developed independent of Lot 69, which is vacant; and

WHEREAS, the site is occupied by a one-story, single-family home with 642 sq. ft. of floor area (0.27 FAR); the existing site has the following yard non-compliances: a front yard depth 8’-0” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); no rear yard (a minimum rear yard depth of 20’-0” is required, per ZR § 23-47); side yards with widths of 2’-0” (western side yard) and 22’-5” (eastern side yard) the requirement is two side yards with minimum widths of 5’-0”, a minimum combined width of 13’-0”, and a minimum distance between adjacent buildings along a side lot line of 8’-0”, per ZR § 23-461); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 816 sq. ft. of floor area (0.34 FAR); the new building will provide a front yard depth of 12’-6”, a rear yard depth of 10’-0”, an western side yard width of 11’-8”, and eastern side yard width of 5’-0”; and

WHEREAS, in addition, the applicant states that the proposed building will be less than 8’-0” from the building

directly east of the site; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a front yard depth of 12’-6”, a rear yard depth of 10’-0”, and a minimum distance of less than 8’-0” from the building directly east of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front, rear, and side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested front, rear, and side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR §

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64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from 8'-0" to 12'-6", an increase in rear yard depth from 0'-0" to 10'-0", and increase in the widths of both side yards; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-2 (C1-1) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 15"-four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 816 sq. ft. of floor area (0.34 FAR), a minimum front yard depth of 12'-6", a minimum rear yard depth of 10'-0", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the building directly east of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief

granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

296-14-A

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 58 Seafoam Avenue, between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot 10068, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to permit the construction of a single-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Vice- Chair Hinkson; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is applicant is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the site is also the subject of a companion application filed under BSA Cal. No. 295-14-BZ, for a special permit pursuant to ZR § 64-92, to permit, on a site within an R3-2 (C1-1) zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR

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§§ 23-45, 23-461, and 23-47; and

WHEREAS, the subject site is located on the south side of Seafoam Street, west of Cedar Grove Avenue, within an R3-2 (C1-1) zoning district; and

WHEREAS, the site comprises Lots 68 and 69; it has 40 feet of frontage along Seafoam Street and 2,400 sq. ft. of lot area; historically, Lot 68 was developed independent of Lot 69, which is vacant; and

WHEREAS, Seafoam Street is an unmapped access road; and

WHEREAS, the site is occupied by a flood-damaged, single-family home with a 642 sq. ft. of floor area (0.27); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 816 sq. ft. of floor area (0.34 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated December 2, 2014, the Fire Department states that it has reviewed the proposal and has no objections, provided that: (1) the entire building is fully-sprinklered in conformity 2014 Building Code; (2) combination Smoke/Carbon Monoxide detectors as well NFPA 13D fire sprinklers are installed; (3) exterior walls and floors are constructed of eight-inch Autoclaved Aerated Concrete (AAC) panels (or an approved equivalent), which provide a four-hour fire-resistance rating; (4) penetrations through the AAC floor over parking are firestopped per required the occupancy separation; and (5) the height of the highest window does not exceed 30 feet from grade level below such window; and

WHEREAS, based on the record, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked "December 15, 2014"- one (1) sheet, and on further condition:

THAT the approved plan shall be considered approved only for the portions related to the specific relief granted;

THAT the entire building shall be fully-sprinklered in conformity with provisions of 2014 Building Code;

THAT combination Smoke/Carbon Monoxide detectors and NFPA 13D fire sprinklers shall be installed;

THAT the exterior walls and floors shall be constructed of eight-inch autoclaved AAC panels (or an approved equivalent), which provide a four-hour fire-resistance rating;

THAT the penetrations through the AAC floor over parking shall be firestopped per required the occupancy separation;

THAT the height of the highest window sill shall not exceed 30 feet from grade level below such window;

THAT this approval shall be limited to the Build to

Back program; and

THAT the approved plans shall be considered approved only for portions to the specific relief granted; and

THAT changes to the use or occupancy of the building will be subject to Board review and approval; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

303-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 1032 Olympia Boulevard, between Mapleton Avenue and Hempstead Avenue, Block 0380, Lot 80016. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461, 23-47, and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2

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RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard between Hempstead Avenue and Mapleton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Olympia Boulevard and 1,980 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 583 sq. ft. of floor area (0.29 FAR); the existing site has the following yard non-compliances: no front yard (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of 20'-4" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and side yards with widths of 3'-7" (northern side yard) and 1'-10" (southern side yard) (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.55 FAR); the new building will provide a front yard depth of 18'-0", a rear yard depth of 21'-0", a northern side yard width of 3'-5", and southern side yard width of 3'-0"; and

WHEREAS, in addition, the applicant represents that the proposed building will be less than 8'-0" from the building directly south of the site; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a rear yard depth of 21'-0", a minimum distance of less than 8'-0" from the building directly south of the site, and side yard widths of 3'-5" and 3'-0"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow

for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side and rear yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding

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neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from a non-complying 0'-0" to a complying 18'-0", and an increase in open space ratio from 71 percent to 73 percent; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461, 23-47, and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. of floor area (0.55 FAR), a minimum rear yard depth of 21'-0", and side yards with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the building directly south of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,

December 16, 2014.

304-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 1034 Olympia Boulevard, between Mapleton Avenue and Hempstead Avenue, Block 0380, Lot 80015 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard between Hempstead Avenue and Mapleton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Olympia Boulevard and 1,860 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 756 sq. ft. of floor area (0.40 FAR); the existing site has the following yard non-compliances: no front yard (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of

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26'-9" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and side yards with widths of 1'-7" (northern side yard) and 3'-1" (southern side yard) (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.58 FAR); the new building will provide a front yard depth of 15'-0", a rear yard depth of 20'-9", a northern side yard width of 3'-5", and southern side yard width of 3'-0"; and

WHEREAS, in addition, the applicant represents that the proposed building will be less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a front yard depth of 15'-0", a rear yard depth of 20'-9", a minimum distance of less than 8'-0" from the buildings directly north and south of the site, and side yard widths of 3'-5" and 3'-0"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front, rear and side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested front, rear, and side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from 0'-0" to 15'-0", and an increase in open space ratio from 60 percent to 71 percent; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair

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the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. of floor area (0.58 FAR), a minimum rear yard depth of 20'-9", and side yards with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the buildings directly north and south of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

305-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 296 Adams Avenue, between Mapleton Avenue and Hempstead Avenue, Block 0367, Lot 30011 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the south side of Adams Avenue between Boundary Avenue and Haven Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Adams Avenue and 1,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 1,059 sq. ft. of floor area (0.62 FAR); the existing site has the following yard non-compliances: floor area (a maximum FAR of 0.60 is permitted); no front yard (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of 14'-0" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and side yards with widths of 3'-0" (eastern side yard) and 1'-2" (western side yard) (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department

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of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,020 sq. ft. of floor area (0.60 FAR); the new building will provide a front yard depth of 15'-0", a rear yard depth of 12'-10", an eastern side yard width of 3'-5", and western side yard width of 3'-0"; and

WHEREAS, in addition, the applicant represents that the proposed building will be less than 8'-0" from the buildings directly east and west of the site; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a front yard depth of 15'-0", a rear yard depth of 12'-10", a minimum distance of less than 8'-0" from the buildings directly east and west of the site, and side yard widths of 3'-5" and 3'-0"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character

of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front, side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested front, rear, and side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a reduction in FAR, a smaller footprint, an increase in front yard depth from 0'-0" to 15'-0", increases in the width of both side yards, an increase in open space ratio from 38 percent to 70 percent; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure,

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issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front, rear, and side yards, contrary to ZR §§ 23-45, 23-461, 23-47, and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,020 sq. ft. of floor area (0.60 FAR), a minimum front yard depth of 15'-0", a minimum rear yard depth of 12'-10", and side yards with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the buildings directly east and west of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

306-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 156 Baden Place, Block 0381, Lot 00018 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR §§ 23-461 and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the south side of Baden Place between Hempstead Avenue and Mapleton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Baden Place and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 580 sq. ft. of floor area (0.29 FAR); the existing site has the following yard non-compliances: no front yard (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of 25'-7" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); and no northern side yard and a southern side yard with a width of 2'-0" (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the

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existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 18'-0", a rear yard depth of 35'-10", a northern side yard width of 3'-2½", and a southern side yard width of 3'-2½"; and

WHEREAS, in addition, the applicant represents that the proposed building may be less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a minimum distance of less than 8'-0" from the buildings directly north and south of the site and two side yards with widths of 3'-2½"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from 0'-0" to 18'-0", an increase in rear yard depth from 25'-7" to 35'-10", increases in the widths of both side yards, an increase in open space ratio from 71 percent to 73 percent; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR §§ 23-461 and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014" - four (4) sheets; and *on further condition*:

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THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. of floor area (0.54 FAR), a minimum front yard depth of 18'-0", a minimum rear yard depth of 35'-10", and side yards with minimum widths of 3'-2½" and 3'-2½", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the buildings directly north and south of the site;

THAT this approval shall be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2014;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

309-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 55 Hempstead Avenue, Block 0380, Lot 90003 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461, 23-47, and 54-313; and

WHEREAS, a public hearing was held on this application on December 16, 2014, after due notice by publication in *The City Record*, and then to decision on that

same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the north side of Hempstead Avenue between Baden Place and Colony Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Hempstead Avenue and 1,900 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged, one-story, single-family home with a 960 sq. ft. of floor area (0.50 FAR); the existing site has the following yard non-compliances: 50 percent open space ratio (a minimum open space ratio of 65 percent is required, per ZR § 23-141); a front yard depth 0'-5" (a minimum front yard depth of 18'-0" is required, per ZR § 23-45); a rear yard depth of 14'-6" (a minimum rear yard depth of 30'-0" is required, per ZR § 23-47); no side yards (the requirement is two side yards with minimum widths of 5'-0", per ZR § 23-461 and 23-48; however, non-complying side yards may be reconstructed, per ZR § 54-41); and

WHEREAS, the applicant represents and the Board accepts that all information regarding the size and location of the existing building at the site and the existing buildings at adjacent sites are based on MapPLUTO and Department of Finance records; as such, the distances between the existing building and the neighboring buildings are estimates; and

WHEREAS, in addition, the applicant represents and the Board accepts that the site was owned separately and individually from all other adjoining tracts of land on December 15, 1961; as such, provided that the site remains in separate and individual ownership on the date of application for a building permit, the site shall be governed by ZR §§ 23-33 and 23-48; and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,134 sq. ft. of floor area (0.60 FAR); the new building will provide a front yard depth of 18'-0", a rear yard depth of 23'-1", an eastern side yard width of 3'-0", and western side yard width of 3'-5"; and

WHEREAS, in addition, the applicant represents that the proposed building will be less than 8'-0" from the buildings directly east and west of the site; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-

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complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; in addition, as noted above, per ZR §§ 23-461 and 23-48, side yards must have a minimum width of 5'-0"; and

WHEREAS, thus, the applicant seeks a special permit to allow construction of the new building with a rear yard depth of 23'-1", a minimum distance of less than 8'-0" from the buildings directly east and west of the site, and side yard widths of 3'-5" and 3'-0"; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the side and rear yard requirements, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant

construction standards without the requested side and rear yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, an increase in front yard depth from a non-complying 0'-5" to a complying 18'-0", an increase in open space ratio from 50 percent to 70 percent, and increase in the widths of both side yards, and increase in the depth of the rear yard from 14'-6" to 23'-1"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear and side yards, contrary to ZR §§ 23-461, 23-47, and 54-313; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 9, 2014"- four (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,134 sq. ft. of floor area (0.60 FAR), a minimum rear yard depth of 23'-1", and side yards with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT the building may be less located less than 8'-0" from the buildings directly east and west of the site;

THAT this approval shall be limited to the relief

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granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s);

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by December 16, 2018;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2014.

311-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 178 Kiswick Street, Block 0373, Lot 60019, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, December 16, 2014.

63-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 188 W. 230th Street Corporation, owner; Atlas Athletics, Inc., lessee.

SUBJECT – Application April 23, 2014 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Astral Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 5500 Broadway, southeast corner of intersection of Broadway and W 230th Street, Block 3264, Lot 109, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to January 27, 2015, at 10 A.M., for continued hearing.

118-14-BZ

APPLICANT – Rampulla Associates Architects, for Mangone Developers Corporation, owner.

SUBJECT – Application June 3, 2014 – Variance (§72-21) to allow a three-story sixteen unit condominium contrary to use regulations, with accessory parking for thirty six cars.

Located within R3X, R1-2 split zoning district and in an NA-1 designated area.

PREMISES AFFECTED – 1891 Richmond Road, northwest side of Richmond 2667.09' southwest of the corner of Four Corners Road and Richmond Road, Block 895, Lot (s) 61, 63, 65, 67 (61 tentative), Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 3, 2015, at 10 A.M., for continued hearing.

124-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuriy Teyf, owner.

SUBJECT – Application June 2, 2014 – Special Permit (§73-622) for the enlargement of a single-family detached residence to be converted into a two-family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R4 zoning district.

PREMISES AFFECTED – 1112 Gilmore Court, southern side of Gilmore Court between East 11th Street and East 12th Street, Block 7455, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 3, 2015, at 10 A.M., for continued hearing.

168-14-BZ

APPLICANT – Warshaw Burnstein, LLP, for Michael Baum, LLC, owner; Barry's Boot camp NYC. LLC, lessee.

SUBJECT – Application July 14, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Barry's Bootcamp*) within the existing building. M1-5B zoning district.

PREMISES AFFECTED – 419 Lafayette Street, east side of Lafayette Street between East 4th Street and Astor Place, Block 544, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for decision, hearing closed.

177-14-BZ

APPLICANT – Eric Palatnik, PC, for MADDD Properties LLC 34 Arden Lane, owner; CF Flatbush LLC, lessee.

SUBJECT – Application July 24, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within a portion of an altered building. C4-4A/R6A zoning district.

PREMISES AFFECTED – 1038 Flatbush Avenue, 180' south of intersection of Flatbush Avenue and Regent Place, Block 5123, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

MINUTES

ACTION OF THE BOARD – Laid over to February 3, 2015, at 10 A.M., for continued hearing.

184-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Hamilton Plaza Associates, owner; Brooklyn Park Slope Fitness, lessee.

SUBJECT – Application August 6, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Retro Fitness*) on the third floor of the existing building at the premises. M1-2 zoning district.

PREMISES AFFECTED – 1-37 12th Street, eastern side of the intersection between Hamilton Place and 12th Street, Block 1007, Lot 172, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for decision, hearing closed.

185-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Roza 14 WLLC, owner; 14 Wall Day Spa LLC, lessee.

SUBJECT – Application August 6, 2014 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar floor of the existing building at the premises, which is located in a C5-5 zoning district.

PREMISES AFFECTED – 14 Wall Street, north side of Wall Street with frontage on Nassau Street and Pine Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for decision, hearing closed.

285-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 84 McLaughlin Street, Block 0341, Lot 20049. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

286-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 20 Orlando Street, Block 0340, Lot 30016. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

288-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 131 Cedar Grove Avenue, Block 0408, Lot 70002. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

297-14-BZ & 298-14-A

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 6 Topping Street, between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot 50042 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

299-14-BZ & 300-14-A

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 6, 2014 – homes damaged/destroyed by Hurricane Sandy. (GCL 36) waiver for properties located on an unmapped street on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 28 Topping Street, between Roma Avenue and Cedar Grove Avenue, Block 0408, Lot 50043. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January

MINUTES

13, 2015, at 10 A.M., for continued hearing.

307-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 540 Hunter Avenue, Block 0379, Lot 60024 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

308-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 179 Kiswick Street, Block 50042, Lot 60024 Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

310-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 297 Colony Avenue, Block 0381, Lot 40032, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

312-14-BZ

APPLICANT – Department of Housing Preservation and Development, for Build it Back Program.

SUBJECT – Application November 10, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 65 Hempstead Avenue, Block

0381, Lot 00008, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 13, 2015, at 10 A.M., for continued hearing.

Ryan Singer, Executive Director